

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Revision No.57 of 2014

T.Kannappan

.. Petitioner

Vs

1. K.Appavu Pandian

2. Arunthier Alex Raj @
Alex Raj @M.A.Pandian.

3. Esa

4. Inban

5. Inspector of Police,
J6 Police Station,
Thiruvanmiyur,
Chennai 600 041.

.. Respondents

Prayer:- Criminal Revision filed under Sections 397 and 401 of Cr.P.C., to set-aside the order dated 28.05.2004 made in C.C.No.4407 of 1994 on the file of the learned IX Metropolitan Sessions Judge, Saidapet, Chennai, and remand back the same for fresh trial.

For Appellant : Mr.K.Balakrishnan

For Respondent : Mr.R.Ravichandran,
Gov. Adv. (Crl. Side)
for R5

ORDER

The respondents 1 to 4 are accused in C.C.No.4407 of 1994 on the file of the IX Metropolitan Magistrate, Saidapet, Chennai. They stood charged for the offences under Sections 457 and 380 IPC. The trial Court, by judgment dated 28.05.2004, acquitted all the accused. Now, challenging the order of acquittal, P.W.2, is before this Court with this revision.

2. The case of the prosecution, in brief, is as follows:-

The second respondent/A2 was a tenant under P.W.2 in respect of a shop. P.W.1 is another tenant under P.W.2 in another shop. On 06.03.1994, at about 10.00 a.m., when P.W.1 came to open his shop, he found that the name board of the shop has been changed as AVS Thomas Recording and the shop has been broke open and the things have been stolen from the shop. Hence, he has given a complaint before the respondent police.

3. P.W.5, Sub-Inspector of Police, in the respondent police, on receipt of the complaint, registered a case in Crime No.339/1994. Then he proceeded to the scene of occurrence and recorded the statements of the Witnesses and recovered the material objects(M.Os.1 to 12) in the presence of the witnesses. After completing investigation, he laid charge sheet against the accused.

4. Based on the above materials, the trial Court framed charges as mentioned in the first paragraph of the judgment and the accused denied the same. In order to prove its case , on the side of the prosecution, as many as 5 witnesses were examined and 7 documents were exhibited, besides 20 material objects were marked.

5. Out of the witnesses examined, P.W.1 is a tenant under PW.2 and running a shop. According to him, on 06.03.1994 at about 10.00 a.m., he found the shop was broke open and the properties were stolen and hence, he lodged a complaint before the respondent police. P.W.2 is the owner of shop. According to him, there is a civil dispute between the parties and using the interim order granted by a civil Court, the second respondent/A2 has broke open the shop and stolen the articles. P.W.3, who is the watchman working in the shop, turned hostile. P.W.4, witness to the Observation Mahazar and recovery of the material objects, turned hostile and P.W.5, Sub-Inspector of Police, registered the case, recorded the statements of the witnesses and recovered the materials and after completion of investigation, he laid charge sheet against the accused.

6. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. However, they did not choose to examine any witness or mark any documents on their side.

7. Having considered all the above materials, the trial Court acquitted all the accused, in respect of above charges, as detailed in the first paragraph of this judgment. Aggrieved against the acquittal of the accused from the charge, the present Criminal Appeal has been filed.

8. Mr.K.Balakrishnan, learned counsel appearing for the revision petitioner submits that the respondent/accused after obtaining a fraudulent order from the Civil Court, broke open the shop and stolen the property. Even though they are ample evidence to show that only the respondents 1 to 4/Accused have broken open the store and stolen the property, the court below without giving sufficient opportunity to produce all the documents has acquitted the accused. On that score, he submits that the matter may be remanded back to the trial court for a fresh trial.

9. I have considered the rival submissions and perused the materials available on record carefully.

10. The specific case of the prosecution is that A2 is a tenant under P.W.2 and using a civil court order broke open the shop of P.W.1 and stolen the article. The one and only witness, who is said to have scene the occurrence was the watchman examined as P.W.3 and he turned hostile. Except that, there is no other witness available to prove that the respondents 1 to 4/accused, have broke open the shop and stolen the article. Considering the above materials, the trial court acquitted the accused and there is no evidence available to prove the charge against the accused.

11. So far as the contention of the learned counsel appearing for the petitioner that there are having voluminous documents to prove that the respondents 1 to 4/accused had broke open the shop and sought for remand back. The matter cannot be remanded back to the trial Court for filling up the lacuna. It is primary duty of the prosecution to produce the documents and prove the case beyond any reasonable doubt. In the above circumstances, the request of the petitioner's counsel cannot be considered at this point of time.

12. It is settled principal of law that in an revision against acquittal, there is double presumption in favour of the accused.

Firstly, the presumption of innocence is available to him and the fundamental principle of criminal justice delivery system is that every person, accused of committing an offence shall be presumed to be innocent, unless his guilt is proved by a competent Court of law. Secondly if the accused has secured an order of acquittal, the presumption of his innocence is reaffirmed and strengthened by the trial Court. Even if two reasonable conclusions are possible on the basis of evidence on record, the appellate Court should not disturb the finding of the acquittal recorded by the trial Court.

13. In the above circumstances, I find no perversity in the judgment of the trial Court and I find no reason to interfere with the order of acquittal passed by the trial Court. Hence, the appeal fails and the same is deserves to be dismissed.

14. Accordingly, the criminal revision case is dismissed.

03.04.2017

mrp

Index: yes/no

Internet: yes/no

Speaking order/non speaking order

To

1. The IX Metropolitan Sessions Judge,
Saidapet, Chennai,
2. The Public Prosecutor,
High Court, Madras.

V.BHARATHIDASAN.J.,

mrp

Crl.R.C.No.57 of 2014

03.04.2017

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