

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 08.06.2017

CORAM:

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

Criminal Revision Case No.963 of 2011

K.Kuppusamy Gounder

... Petitioner/Defacto Complainant

Vs

1.N.S.Ravichandran

... 1st Respondent/Single Accused

2.State by Sub-Inspector of Police,
Malayampalayam Police Station,
Erode District.

... 2nd Respondent/Complainant

Criminal Revision filed under Sections 397 and 401 of the Criminal Procedure Code against the order of acquittal dated 02.09.2010 made in S.T.C.No.15 of 2010 on the file of the District Munsif cum Judicial Magistrate, Kodumudi.

For Petitioner : Mr.V.Anandhamoorthy

For Respondent-1: No Appearance.

For Respondent-2: Mr.E.Raja,
Addl. Public Prosecutor

O R D E R

This Criminal Revision has been preferred by the Defacto Complainant as against the order of acquittal of the first Respondent for the alleged offence under Sections 427, 294(b) and 341 of I.P.C.

2.Brief facts of the case of the prosecution is as follows:-
P.W.1 and accused are the neighbouring land owners. P.W.2 and P.W.3 are working in the field of P.W.1. On 18.10.2009, while P.W.2 and P.W.3 were as usual working in the field of P.W.1, the accused caused damage to the pipeline passing through his land to the land of P.W.1 and the same was informed to P.W.1 by P.W.2 and P.W.3. On the next day P.W.1 enquired about the same with the accused. At that time, the accused not only abused him by

obscene words but also threatened him besides damaged the pipeline to the value of Rs.100/- on the previous day. In this regard, P.W.1 lodged a First Information-Ex.P1 to the Sub-Inspector of Police-P.W.6 on the evening of 19.10.2009. P.W.6 on the basis of the Ex.P1 given by P.W.1, registered a First Information Report-Ex.P4, taken up investigation, reached the place of occurrence and prepared observation mahazar-Ex.P5 and rough sketch-Ex.P6 in the presence of P.W.4 and P.W.5 and on the same day at 5.15 P.M., P.W.6 arrested the accused, examined the witnesses and recorded their statements. After completion of investigation, P.W.6 filed a charge sheet against the accused for the offence under Sections 427, 294(b) and 341 of I.P.C.

3. Based on the materials placed by the prosecution in the charge sheet, the learned trial Court has taken cognizance of the crime in S.T.C. No.15 of 2010 for the offence under Sections 427, 294(b) and 341 of I.P.C. and questioned the accused. Since, the accused pleaded not guilty, the learned trial Court ordered for trial.

4. During trial, on the side of the prosecution 6 witnesses were examined as P.W.1 to P.W.6 and six documents were marked as Ex.P1 to Ex.P6. P.W.1 is the Defacto Complainant; P.W.2 and P.W.3 are the field workers of P.W.1; P.W.4 and P.W.5 are the mahazar witnesses and P.W.6 is the investigating officer. Ex.P1 is the First Information lodged by the Defacto Complainant against the accused. Ex.P2 is the signature of P.W.4 found in Ex.P5. Ex.P3 is the signature of P.W.5 found in Ex.P5. Ex.P4 is the First Information Report. Ex.P5 is the observation mahazar. Ex.P6 is the rough sketch.

5. On the basis of the materials and evidence, the learned trial Court ultimately found the charges against the accused have not been proved beyond reasonable doubt. Hence, the learned trial Court passed an order of acquittal. Against which the present revision has been filed by the Defacto Complainant.

6. The learned counsel for the Revision Petitioner vehemently contended that though the defacto complainant has produced materials and evidence to establish the offence under Section 427, 294(b) and 341 of I.P.C. as against the accused, the learned trial Court has not properly appreciated the evidence and passed an order of acquittal. Hence, prayed for setting aside the order of acquittal passed by the learned trial Court and the accused has to be convicted.

7.The learned Additional Public Prosecutor submitted that the learned trial Court has fairly appreciated the material and evidence. He has further submitted that the Revision is not maintainable as against the order of acquittal and appeal has to be made. Hence, prayed for dismissal of the revision.

8.This Court perused the entire materials and evidence. The accused has been charged for the offence under Sections 427, 294 (b) and 341 of I.P.C. The evidence of P.W.1 to P.W.6 when carefully seen, P.W.1 is not an eye-witness to the alleged mischief caused by the accused on 18.10.2009. His evidence with regard to the alleged mischief is nothing but hearsay evidence. P.W-2 and P.W.3 are said to be the workers of P.W.1., allegedly informed P.W.1 about the mischief caused by the accused on the previous day. Though P.W.2 and P.W.3 have also spoken about the alleged damage caused by the accused to the pipeline which is passing through his lands and P.W-1's lands, the evidence of P.W.2 and P.W.3 when carefully seen their evidence is highly contradictory from 161(3) statement. In fact, P.W.2 and P.W.3 in their evidence clearly show that they improved first time as to the mischief caused by the accused by using crowbar and spade. P.W.2 and P.W.3, are interested witness and they are the employees of P.W.1 and therefore, their evidence cannot be given much importance. But in any event, the evidence of P.W.1 itself clearly indicate that wife of accused and the accused have involved in such offence. The evidence of P.W.2 and P.W.3 is otherwise. All these facts clearly shows that evidence of P.W.2 and P.W.3 is not sufficient to convict the accused. Similarly, the evidence of P.W.1 to P.W.3 with regard to the alleged use of obscene words is also highly doubtful.

9.In view of the serious inconsistency and improvement and material discrepancies in their evidence, it is not safe to rely upon the prosecution version. The First Information Report reached to the Court next day at 7.50 P.M. The delay also has not been properly explained. Further, the alleged use of so called Material Objects for causing damage to the pipeline has not recovered. No materials have been produced by the prosecution to show that the pipeline was damaged. Admittedly there was civil dispute between the parties which is not in dispute. Therefore, the possibility of giving false information to police also cannot be ruled out. Therefore, from the entire material and evidence, this Court does not find any material to interfere with the order of acquittal passed by the trial Court. In fact this Court is also of the view that this revision itself is not maintainable as against the order of acquittal. Further, even Revision is treated as appeal, even then on appreciation of evidence as discussed above, evidence available on record is not sufficient to prove the guilt of the accused beyond all

reasonable doubt. The trial Court appreciated the evidence properly and recorded order of acquittal, the same does not require any interference. Hence the Revision is dismissed.

Sd/-

Asst.Registrar (CCC)

/true copy/

Sub Asst. Registrar

To:

1.The District Munsif Cum Judicial Magistrate,
Kodumudi

2.The Sub-Inspector of Police,
Malayampalayam Police Station,
Erode District.

3.The Public Prosecutor,High Court, Madras

+lcc to Mr.V.Anandha moorthy,Advocate sr.41109

CrI.R.C.No.963 of 2011

ca(co)
ss(21/6/2017)



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