

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2017

CORAM:

THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Criminal Appeal No.235 of 2008

Pappa @ A.M.Ismayil

.. Appellant

Vs

1.Muthu Pappa @ Abdul Rahman
2.Abdulrahman
3.Abusali
4.Sigapdeen
5.Sardaar
6.Manivakhab
7.Bazeer

.. Respondents

Prayer:- Criminal Appeal filed under Section 378 Cr.P.C., to call for the records in C.C.No.244 of 1994 on the file of the Judicial Magistrate No.II, Thiruppur and set aside the judgment dated 07.02.2007 and convict the respondents by allowing this appeal.

For Appellant : Mr.Lakshmanasamy
for M/s.V.N.S.Law Firms

For Respondents : Mr.C.Ramkumar

JUDGMENT

The appellant is the complainant in a private complaint in C.C.No.244 of 1994 on the file of the learned Judicial Magistrate No.II, Thiruppur. The trial Court acquitted the Accused. Now, challenging the order of acquittal, the appellant/complainant is before this Court with this criminal appeal.

2. The above said complaint has been given by the complainant on the ground that the complainant was a tenant under A1 in this case and he was running a cycle repairing shop. A1 in order to evict the complainant filed an Eviction Petition before the District Munsif Court, Thiruppur, which was dismissed. Subsequently, in order to evict him by illegal

means, all the accused came to the appellant's shop on 22.10.1992 at about 8.00 a.m., dragged him out of the shop. Then A1 to A8 demolished his shop and removed the materials worth about Rs.10,000/- (Rupees Ten Thousand Only). Thereafter a police complaint was also lodged against them, based on the same a crime was also registered and after investigation, the complaint was closed as 'mistake of fact'. Hence, he filed a private complaint against the accused for the offence under Sections 147, 148, 448, 427, 391, 342, 164 and 166 IPC. The trial Court has also taken cognisance of the offence and summons were issued to the accused.

3. In order to prove his case, the complainant has examined 6 witnesses and 16 documents were exhibited. Out of these witnesses, P.W.1 is the complainant, according to him he was running a cycle repair shop and all the accused has illegally evicted him and demolished his shop and taken the materials worth about Rs.10,000/- P.Ws.2 to 5 are belongs to the same area, all of them spoken about the occurrence that the occurrence took place on 22.10.1992 at about 8.00 a.m., and on the next day morning, the shop was totally demolished. P.W.6 is an Eye Witness, to the occurrence and spoken about the demolition of shop and also sending complaint by telegram to the police.

4. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. In order to prove their case, they examined one Meena Kumar as DW1 and also marked 8 documents as exhibits.

5. Considering all these materials, the trial Court acquitted the accused mainly on the ground that there are lot of contradictions in the prosecution witnesses and there was a delay of 2 years in filing the private complaint after filing the final report in the police case which was not explained by the complainant. Apart from that in the police case the complainant had implicated only 4 persons, but in the private complaint he has implicated 9 persons. Which creates doubt in the complainant case. Now, challenging the order of acquittal, the appellant has filed the present appeal.

6. I have heard, Mr.S.Lakshmanasamy for M/s.V.N.S.Law Firms, learned counsel appearing for the appellant and Mr.C.Ramkumar, learned Counsel appearing for the respondents and also perused the records carefully.

7. According to the complainant, the occurrence was taken place on 22.10.1992 at about 10.00 p.m, and, earlier, there was a quarrel in the morning. P.W.2 to 6 have only spoke about the earlier quarrel and they have not spoken anything about the demolition of his shop by the accused.

8. Apart from that even though the complainant claim that he was detained by A9 in the police station at midnight, from the materials available on record, it could be seen that only a mediation was conducted between the complainant and another person, he was not detained in the police station.

9. Admittedly, the complainant has earlier given a police complaint implicating only 4 persons, but in the private complaint he has implicated 9 persons which also casting a doubt in the prosecution case. Apart from that the earlier police complaint was investigated and a negative final report was filed on 19.12.1992 as 'mistake of fact'. Thereafter, after two years only on 12.05.1994, the present private complaint has been filed and there is no explanation for long delay in filing the complaint.

10. It is settled principal of law that in an order of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to them 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 available on record, the appellate Court should not disturb the finding of the acquittal recorded by the trial Court.

11. Considering all these materials, the trial Court acquitted the accused, I have carefully gone through the materials available on record and I find no illegality or irregularity or perversity in the findings of the courts below and I find no merits in this appeal.

12. In the result, the Criminal Appeal is dismissed and judgement of the trial Court in C.C.No.244 of 1994, dated 07.02.2007, is confirmed.

s/d-

Assistant Registrar(CS-V)

True Copy

Sub-Assistant Registrar

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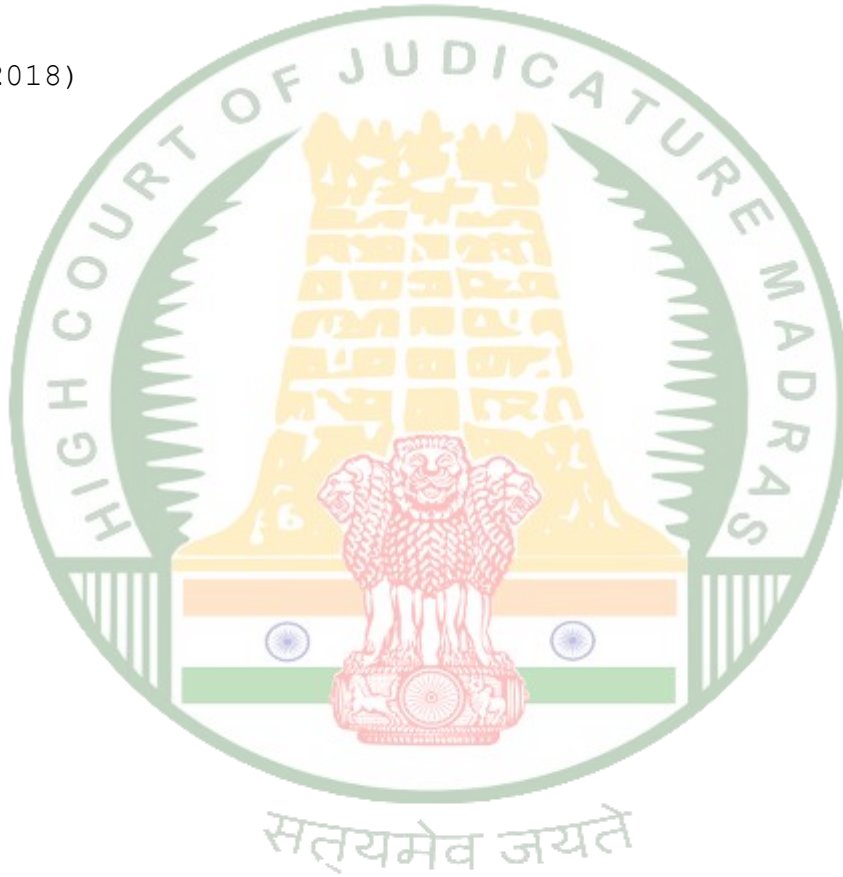
To

The Judicial Magistrate No.II,
Thiruppur.

+1 CC to Mr.C. Ramkumar, Advocate sr 81571.

Cr1.A.No.235 of 2008

RK (CO)
SP (12/06/2018)



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