IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2017

CORAM

THE HONOURABLE MR. JUSTICE V.BHARATHIDASAN

Crl.R.C.No.1234 of 2010

S.Sivaprakasam ... Petitioners

vs

1.Sainath
2.Renuga
3.Mani
4.State
Rep. by the Sub Inspector of Police,
G-3, Puzhal Police Station,
Chennai-66.
(Crime No.348 of 2000) ... Respondent

Criminal Revision filed under section 397 r/w 401 of the Code of Criminal Procedure, against the judgment dated 30.04.2010 passed in C.A.No.55 of 2009 on the file of the learned Additional District Judge, (Fast Track Court No.Iv), Ponneri, reversing the judgment dated 16.06.2003 passed in C.C.No.143 of 2001 on the file of the learned District Munsif Cum Judicial Magistrate, Thiruvottriyur.

For Petitioners : Mr.T.Sai Krishnan
M/S.Sai Bharath & Ilan

For Respondents : Mr.P.Chandrasekar for R1 & R2
Mrs.M.F.Shabana for R-4
Government Advocate(Crl. Side)

O R D E R

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This revision has been filed against the order of acquittal. Earlier based on the complaint given by the defacto complainant, a case was registered in Crime No.348 of 2000 for the offence under Sections 427, 506(2) and 448 IPC against the accused. After investigation, charge sheet has been filed and the accused stood charged for the offence under Sections 427, 506(2) and 448 IPC. The Trial Court, after elaborate trial, acquitted the accused under Sections 427 and 506(ii) IPC and convicted them under Section 448 IPC and imposed a fine of Rs.750/- in default

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to undergo one month simple imprisonment. Challenging the above said conviction and sentence, the respondents 1 to 3 herein filed a Criminal Appeal in C.A.No.51 of 2003 on the file of learned Additional District and Sessions Judge, (Fast Track Court No.IV), Ponneri. The lower Appellate Court, by its Judgment dated 30.04.2010, allowed the criminal appeal and set aside the conviction imposed by the trial Court. Challenging that order, the defacto complainant/revision petitioner filed a criminal revision case before this Court in Crl.R.C.No.111 of 2009. This Court, by order dated 15.06.2009, set aside the order passed by the lower appellate Court and remitted back the case to the lower appellate Court for re-appreciating the available evidence. Now, once again, the lower appellate Court allowed the appeal and set aside the conviction and sentence and acquitted all the accused. Challenging above said order of acquittal, the present revision has been filed.

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

P.W.1 is the owner of a house. On 17.10.1999 at about 8.00 a.m., he went out of the house and after half an hour, while he was coming back, all the accused broke open the door and threw away the cement bag worth about Rs.500/-. Hence, he filed a complaint before the respondent police on the same day. But, the case was not registered by the respondent police. Since case was not registered by the respondent police, he filed a petition before the Judicial Magistrate Court, seeking a direction for registration of a case and based on the direction issued by the learned Judicial Magistrate, P.W.5, the Sub Inspector of Police, working in the respondent police station, registered a case in Crime No.348 of 2000 for the offence under Sections 453, 427 and 506(ii) IPC and prepared a first information report[Ex.P4]. Then, he commenced investigation, proceeded to the scene of occurrence, examined the witnesses and recorded their statements and after completion of investigation, he laid charge sheet.

3. Based on the above materials, the Trial Court framed charges as detailed above and the accused denied the same as false. In order to prove the case of prosecution, as many as 5 witnesses were examined and 4 documents were marked.

4. Out of the said witnesses examined, P.W.1 is the defacto complainant. He claims to be the owner of the property in Door No.24, Villivakkam Road, Lakshmipuram, Chennai. He had paid the property tax and other taxes. On the date of occurrence, all the accused broke open the door, entered into the property and damaged the property. Hence, he had given a complaint before the respondent police on the same day. But, the respondent police had not registered the case. Since the case was not registered

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by the respondent police, he filed a petition before the Judicial Magistrate Court, seeking registration of the case and based on the direction issued by the learned Judicial Magistrate, the case was registered. P.W.2 is a Power of Attorney holder who sold the property to P.W.1. He is the hearsay evidence. P.W.3 is an eye witness to the occurrence. According to him, on the date of occurrence all the accused broke open the door and threw away the materials. P.W.4 claims to be a tenant of P.W.1. According to him, on the date of occurrence, somebody informed him that the accused broke open the door and he along with P.W.1 went to the scene of occurrence and at that time all the accused entered into the house and threw away the cement bags. P.W.5, the Sub Inspector of Police, working in the respondent police station, registered the case, conducted the investigation, examined the witnesses and recorded their statements and after completion of investigation, he laid charge sheet.

5. When the above incriminating materials were put to the accused under Section 313 Cr.P.C., they denied the same as false. Their defence was a total denial. The accused did not examine any witness and no document was marked on their side.

6. After elaborate trial, the trial Court convicted the accused for the offences as stated in the first paragraph of this judgement. Challenging the above said conviction and sentence, the respondents 1 to 3/accused have filed a Criminal Appeal in C.A.No.55 of 2009 on the file of the learned Additional District and Sessions Judge, (Fast Track Court No.IV), Ponneri. The lower appellate Court, by its judgment dated 30.04.2010, allowed the appeal, by reversing the judgment passed by the Trial Court. Challenging that order, the defacto complainant/revision petitioner filed a criminal revision case before this Court in Crl.R.C.No.111 of 2009. This Court, by order dated 15.06.2009, set aside the order passed by the lower appellate Court and remitted back the case to the lower appellate Court. Now, once again, the lower appellate Court allowed the appeal and set aside the conviction and sentence and acquitted all the accused. Challenging the above said order of acquittal, the present revision has been filed.

7. The learned counsel appearing for the petitioner would submit that the lower appellate Court did not consider the evidence in proper perspective. P.W.1, the owner of the property had clearly proved his title over the property by producing Ex.P1 sale deed and the respondents 1 to 3 had no right over the property and they had entered into the property and caused damage to the property. The evidence of P.Ws.3 and 4 was also corroborating the evidence of P.W.1. The lower appellate Court, without considering the evidence in a proper

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perspective, has mechanically acquitted the accused. Hence, he sought for allowing the criminal revision case.

8. Per contra, the learned counsel appearing for the respondents 1 to 3 would submit that there is a lot of contradiction between the evidence of P.Ws.1 to 4 and no document was produced by P.W.1 to establish the title of the property. The evidence of P.Ws.2 and 3 also did not prove the title of P.W.1. Hence, considering all the materials, the lower appellate Court acquitted all the accused. Hence, he prays for dismissing the criminal revision case.

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

10. P.W.1, claims to be the owner of the property. Even according to him, the earlier complaint was given by him before the respondent police, which was referred as civil dispute and the same was closed and the petitioner was directed to approach the Civil Court. The above said complaint was not marked by the prosecution. Even the complaint given by the petitioner did not mention the above facts, even in his evidence P.W.1, did not say anything about the title of the property. Apart from that, even as per the evidence of P.W.1, a civil suit also pending between the parties. The evidence of P.Ws.2 to 3 also no way supporting the evidence of P.W.1. P.W.4 claims to be a tenant under P.W.1. His evidence has also not supporting the prosecution case. Considering all the above aspects, the lower appellate Court acquitted the accused.

11. It is settled law that, in a case of acquittal, there is double presumption in favour of the accused. Firstly, every accused person should be presumed to be innocent, unless he or she is found to be guilty by a competent court of law. Secondly, the accused having secured an order of acquittal, the presumption of innocence is in their favour, as 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 and the benefit of doubt has to be extended in favour of the accused. In the above circumstances, the lower appellate Court, after elaborately considering the evidence, has come to the conclusion that the prosecution did not prove the case beyond any reasonable doubt. I find no illegality or perversity in the judgement passed by the lower appellate Court, and I find no reason to interfere with the order of acquittal passed by the lower appellate Court. Hence, the criminal revision fails and the same is deserves to be dismissed.

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12. In the result, this Criminal Revision is dismissed. The order of acquittal passed in C.A.No.55 of 2009 by the learned District and Sessions Judge, (Fast Track Court No.IV), Ponneri, stands confirmed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional District and Sessions Judge,
   Fast Track Court No.IV
   Ponneri,

2. The District Munsif Cum Judicial Magistrate,
   Ponneri.

3. The Sub Inspector of Police,G-3,
   Puzhal Police Station,
   Chennai-66.

+1cc to M/S.Sai Bharath & Ilan, Advocate Sr. 3194

+2ccs to Mr.P.Chandrasekar, Advocate Sr. 3430

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SK(CO)
VR(21/06/2017)

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