

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.07.2017

DELIVERED ON : 14.12.2018

CORAM

THE HONOURABLE MR.JUSTICE C.T.SELVAM

Criminal Revision Case No.113 of 2010

C.Tamilvendan
S/o.Late Chellappan

... Petitioner

vs.

State represented by
Inspector of Police,
G-2, Periyamet Police Station,
Chennai.

... Respondent

Criminal Revision Case filed u/s.397 r/w 401 Cr.P.C. against the judgment of learned III Additional Sessions Judge, Chennai, passed in C.A.No.81 of 2003 on 11.01.2010 confirming the judgment of learned Chief Metropolitan Magistrate, Chennai, passed in C.C.No.537 of 2002 on 24.02.2003.

For Petitioner : Mr.S.Shanmugasundaram,
senior counsel for
Mr.C.H.Vinobha Ghandhi

For Respondent : Mr.R.Rajarathinam,
Public Prosecutor

ORDER

This revision arises against the judgment of learned III Additional Sessions Judge, Chennai, passed in C.A.No.81 of 2003 on 11.01.2010 confirming the judgment of learned Chief Metropolitan Magistrate, Chennai, passed in C.C.No.537 of 2002 on 24.02.2003.

2. Revision petitioner faced prosecution for offences u/s.353 IPC and 3(1) of Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992. Prosecution case was that on 21.09.2001 at about 12.00 p.m., petitioner/accused, with an intent to damage the photograph of the then Chief Minister at the entrance of the Corporation office at Ripon Building, entered the premises and despite the police constable on duty trying to prevent him from doing so, petitioner obstructing such constable in the performance of his duty, grabbed the photograph of the then Chief Minister Jayalalithaa and from the second floor threw it down on the lawn, breaking it and again repeated the act regards the photograph at the conference room on the second floor. By his offending act petitioner also caused loss to the Corporation in a sum of Rs.730/-. Petitioner was tried in C.C.No.537 of 2002 on the file of learned Chief Metropolitan Magistrate, Chennai.

3. Before trial Court, prosecution examined 11 witnesses, marked 8 exhibits and 4 material objects. None were examined on behalf of defence nor were any

exhibits marked. On appreciation of materials before it, trial Court, under judgment dated 24.02.2003, convicted petitioner for offences u/s.353 IPC and 3(1) of Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992 and sentenced to 6 months R.I. and fine of Rs.500/- i/d 2 months S.I. for offence u/s.353 IPC and 1 year R.I. and fine of Rs.1,000/- i/d 3 months S.I. for offence u/s.3(1) of Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992. The appeal preferred by petitioner in C.A.No.81 of 2003 on the file of learned III Additional Sessions Judge, Chennai, came to be dismissed under judgment dated 11.01.2010. Hence, this revision.

4. Heard learned senior counsel for petitioner and learned Public Prosecutor for State.

5. The findings of conviction arrived at by Courts below are erroneous and this revision is to be allowed for the following reasons:

Offence u/s.3(i) of the Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, stands attracted where a person commits mischief by doing any act in respect of any property and thereby causes damage or loss to such property to the amount of one hundred rupees or upwards. Section 2(2) of the Act informs “Mischief” shall have the same meaning as in Section 425 of the Indian Penal Code. We would be called upon to enter upon a discussion of whether the offence stands

committed only where the prosecution proves that damage to the tune of Rs.100/- was caused. It is the admission of PW-10, Sub-Inspector of Police, who was the investigating officer that the photograph of the then Chief Minister found at the lawn had suffered no damage. Though PW-10 has spoken to the photograph seized on the second floor having been torn, it is his admission that none of the witnesses had informed him so in the course of his investigation. PW-10 has deposed to seizing a broken frame and glass pieces in the presence of two witnesses but he admits that both were brokers for purchase of railway tickets. Apart from these two persons, all other witnesses examined are Corporation/Government employees. His tale of none of the general public, who were present, coming forward as witnesses is unacceptable. The two attesting witnesses to the seizure of photo frame etc. being railway ticket brokers, can only be seen as obliging witnesses. PWs.1 to 4 have been examined as witnesses to the offending acts of petitioner. Except for variations on whether the petitioner was alone or in the company of others the evidence of one mirrors that of the other. While PW-1 is the Police Constable at whose instance the case was registered, PW-2 is again a Police Constable working at the Corporation Office at Ripon Building. PW-3 is an Office Assistant while PW-4, is a Head Constable at Corporation Police Control Room. Quite rightly the defence has suggested that in keeping with the usual practice of removal and replacement of Chief Minister photographs every time a change of head of Government takes place, a change was effected pursuant to decision of

the Supreme Court dated 21.09.2001, i.e. date of occurrence, convicting the then Chief Minister and out of fear of repercussions since the same political party continued in power, a false case has been foisted upon the petitioner.

6. Learned senior counsel for petitioner has contended that PW-11, Inspector of Police, without conducting any further enquiry whatsoever, has altered the First Information Report to reflect offence u/s.3(1) Tamil Nadu Property (Prevention of Damage and Loss) Act, 1992, with the effect that a case which would have attracted the summons procedure has been made to attract the warrant procedure and further, a case which ought to have been tried by a Judicial Magistrate has been tried by the Chief Metropolitan Magistrate in keeping with Section 8 of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992. This Court does not consider it necessary to dwell on such submission inasmuch as this Court finds that independent witnesses have been avoided, the evidence of alleged eye witnesses is parrot like and in the circumstances, the irresistible conclusion would be that they had no room to depose freely and were bound to stick to the official tale. The examination of two witnesses, who admittedly were railway ticket brokers, in support of the tale of recovery of broken photo frame and glass pieces, is telltale.

The Criminal Revision Case shall stand allowed. The judgment of learned III Additional Sessions Judge, Chennai, passed in C.A.No.81 of 2003 on 11.01.2010 shall stand set aside. Petitioner is acquitted of all charges. Fine, if any, paid shall be refunded. Bail bonds, if any, executed shall stand cancelled.

14.12.2018

Index:yes/no

Internet:yes

gm

To

- 1.The III Additional Sessions Judge,
Chennai.
- 2.The Chief Metropolitan Magistrate,
Chennai.
- 3.The Inspector of Police,
G-2, Periyamet Police Station,
Chennai.
- 4.The Public Prosecutor,
High Court, Madras.



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C.T.SELVAM, J

gm



Pre-delivery order
in
Criminal Revision Case No.113 of 2010

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