

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 21.08.2018

Pronounced on 04.10.2018

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.67 of 2013

Annamalai .. Petitioner/Accused-2

Vs

State represented by

Inspector of Police,

Uthangarai Police Station,

Krishnagiri District.

Crime No.332/2011 .. Respondent/Complainant

PRAYER : Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code, to call for the records in C.C.No.123/2011 dated 18.12.2012 on the file of District Munisif Cum Judicial Magistrate, Utangarai and set aside the finding by holding the petitioner acquitted honourably to secure the ends of justice.

For Petitioner : Mr.R.Sankarasubbu

For Respondent : Mr.R.Ravichandran

Government Advocate (Crl.side)

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O R D E R

The case of the revision petitioner is that the respondent police filed a case against the present revision petitioner and 2 others in Crime No.332/2011 on the file of the Inspector of Police, Uthangarai Police Station, Krishnagiri District. After investigation, the respondent police filed charge sheet against the revision petitioner and 2 others before the Judicial Magistrate, Uthangarai in C.C.No.123/2011. The learned Magistrate, taken up the case on file. After trial, the learned Magistrate acquitted the accused on the ground that the respondent police has not proved its case beyond reasonable doubt and extended the benefit of doubt in favour of the revision petitioner and 2 others. As against the judgment of acquittal, the prosecution has not preferred any appeal. The

present revision is filed by the petitioner to set aside the finding of the learned Judicial Magistrate, Uthangarai by holding the petitioner acquitted honourably to secure the ends of justice. On the ground that the Magistrate having held no evidence against the revision petitioner ought to have acquitted without attaching any stigma to the petitioner.

2.The petitioner is studying B.Sc.,(Maths) IIIrd year at Sri Vidhya Mandir Arts and Science College, Uthangarai and judgment will affect his future career and employment. Further, he would state that the petitioner is also selected as Grade-2 Police Constable.

3.The learned counsel for the petitioner would submit that the petitioner was selected as Grade-2 Police Constable and judgment is against him as he was acquitted, based on the benefit of doubt. The judgment of the trial Court, is perverse in the eye of law. The petitioner is hailing from S.C.Community and the judgment is violated under Article 21 of the Constitution of India. Therefore, considering the above said background, the stigma attached with the judgment against the revision petitioner is liable to be removed.

4.The learned counsel for the petitioner in support of his contentions placed his reliance on the decisions of the Hon'ble Supreme Court and other High Courts and decisions of this Court, which are as follows:-

- i)1972 SLR 44 : 1972 SLR 915 : 1970 ASSAM LR 57 (State of Assam and another Vs. Raghava Rajgopalachari),
- ii)AIR 1933 Ca1800, 1933(58)CLJ405, 38CWN187, (1934)ILR 61Cal168, 146Ind Cas.767 (Major Robert Stuart Wauchope Vs. Emperor)
- iii)(2008) 4 MLJ 88 (D.Mahadevan Vs. Director General of Police, Mylapore, Chennai-4)
- iv)Madras High Court (Thennarasu Vs. State on 28.02.2011)
- v)Madras High Court (S.Ganesan Vs. State on 07.01.2013)

5.The learned Government Advocate (Crl.side) would submit that the case was registered against the revision petitioner and 2 others and in the FIR, the name of the revision petitioner was shown as accused. The defacto complainant, who was examined as P.W.1 has clearly stated that he admitted the complaint given by him before the police and also registered a FIR and after the occurrence, when he was admitted in the Hospital, entry made in the accident register would reveal that he was attacked by known persons. The Magistrate acquitted the accused on the ground that the Doctor who gave the treatment has not been examined and the other independent witnesses have not been examined. Therefore, the prosecution has not proved his case beyond reasonable doubt. The benefit of doubt was extended to the revision petitioner and other accused, thereby acquitted them. Since the magistrate found the prosecution has not proved its case beyond reasonable doubt, there is no perversity in the order passed by the Magistrate. Therefore, there is no merit in the revision. Hence, revision is liable to be dismissed.

6.Heard the rival submissions made on both sides and perused the entire records.

7.It is not in dispute that the case was registered against the revision petitioner and others in Crime No.332/2011. The name of the revision petitioner was shown in the complaint and FIR as accused. After investigation, the respondent police filed a charge sheet against the revision petitioner and 2 other accused. After the case was taken on file on the side of the respondent police, 4 witnesses were examined and 5 documents were marked. On the side of the revision petitioner no oral evidence was let in and no document was produced. The trial Court elaborately discussed the oral and documentary evidence and came to the conclusion that respondent police had not proved the case beyond reasonable doubt. Therefore, the accused were acquitted.

8.The learned counsel for the petitioner would submit that since he was a student at that time and subsequently he has also been selected as Grade-2 Police Constable, stigma would affect the future of the revision petitioner. Though he has placed reliance on the above judgments referred to. But in this case, admittedly, the defacto complainant was examined as P.W.1, and he admitted the complaint given by him before respondent police. He also admitted the signature in the complaint, the name of the revision petitioner and 2 other accused have been mentioned in the said FIR and the revision petitioner was arrived as A2. Further, the wound certificate was marked as Ex.P5. In that it has been stated that the defacto complainant, after the incident, he was admitted in the hospital. At the time of admission, he stated before the hospital authority that he was assaulted by known persons with weapons. Subsequent to the charge sheet, they compromised the matter. Therefore, P.W.1 to P.W.3 have not supported the case of the prosecution.

9.However, on a perusal of the evidence of P.W.1, the defacto complainant admitted in the deposition that when he was in the hospital, the Inspector of Police examined him. At that time he gave a complaint and also FIR was registered against the revision petitioner and others. It is also recorded in the Accident Register that four known persons assaulted him due to which he sustained injury. Subsequently, he has not supported the case of the prosecution. After the trial, the Magistrate found that the prosecution has not proved the case beyond the reasonable doubt, there is no perversity in the order passed by the Magistrate as against the revision petitioner.

10.The learned counsel for the petitioner would submit that the stigma is violating Article 21 of the constitution. It speaks only that no person shall be deprived of life or personal liberty except according to procedure established by law. Whereas, in this case nothing has been found against the due process of law. Therefore, there is no question of violating Article 21 of the Constitution. Further, from the available records, it clearly shows that though case was registered against the revision petitioner and investigation also reveals, there are materials available against the petitioner and trial was also conducted. During trial in the evidence of P.W.1 it is stated that he preferred a complaint against the revision petitioner and others and wound certificate and accident register reveals that he was assaulted by four known persons and sustained injuries. But for the reason, the matter was compromised between the parties. The defacto complainant did not partly support the case of the prosecution.

11.Under these circumstances, the Magistrate held that the case was not proved by the prosecution beyond reasonable doubt, the benefit of doubt was extended. It is not in dispute with regard to the complaint preferred by the defacto complainant before the police in the hospital and he sustained injury and taken treatment, in the Accident Register it is recorded that four known persons attacked him. Since witnesses have not supported the prosecution, the prosecution has failed to prove the case beyond reasonable doubt, the finding recorded by the Magistrate is not perverse and finds there is no merit in the revision. This Court has no quarrel with the decisions referred to by the learned counsel for the petitioner, the facts and circumstances of the cases referred to by the learned counsel for the petitioner are not applicable to the present case on hand.

12.In the result, the criminal revision stands dismissed.

04.10.2018

Index: Yes/No

AT

To

1. The District Munisif Cum Judicial Magistrate,
Utangarai

2. The Inspector of Police,
Uthangarai Police Station,
Krishnagiri District.

P.VELMURUGAN,J.

AT

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