

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 20.07.2018	Delivered on 25.07.2018
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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.R.C.No.1256 of 2011

Raja @ Ilaiyaraja

... Petitioner

...Vs...

State

Rep.by

The Sub Inspector of Police,
Vishnu Kanchi Police Station,
Kancheepuram.

... Respondent

(Cr.No.592 of 2006)

Criminal Revision case filed under Section 397 & 401 of Crl.P.C. against the conviction and sentence passed by the learned District Sessions Judge No.II, Kancheepuram in C.A.No.39/2010 by its judgment dated 20.08.2011, in S.C.No.165 of 2007, on the file of the Assistant Sessions Judge, Kancheepuram.

For Petitioner : Mr.R.Shanmugasundaram,
Sr. counsel
for Mr.V.Krishnakumar

For Respondent : Ms.S.Thankira
Government Advocate (Crl.Side)

O R D E R

This Criminal Revision Petition has been filed against the judgment of the District and Sessions Court No.II, Kancheepuram made in C.A.No.39 of 2010, dated 20.08.2011, confirming the

judgment of the learned Assistant Sessions Judge, Kancheepuram, made in S.C.No.165 of 2007, dated 29.08.2008, convicting the petitioner for an offence under Section 341, 506 (ii) and 394 r/w 397 IPC, and imposing a sentence of six months Simple Imprisonment and fine of Rs.500/- in default to undergo one month Simple Imprisonment for the offences under Section 341 IPC, sentenced to undergo one year Simple Imprisonment and pay fine of Rs.500/- and in default to undergo one month Simple Imprisonment for an offence under Section 506 (ii) IPC and sentenced to undergo five years Rigorous Imprisonment and fine of Rs.1500/- and in default to undergo one month Simple Imprisonment for an offence under Section 394 r/w 397 IPC and all these sentences were directed to run concurrently.

The case of the prosecution in Brief:

2.On 05.08.2006, at about 11' 0 clock, PW-1 was proceeding from Chinna Kanchipuram through Gandhi Road for purchasing Silk Yarn and near Theradi, the petitioner/accused came with Veecharival [M.O-1] and threatened PW-1 for mamool. PW-1 refused to give mamool and the petitioner assaulted him with M.O-1 as a result of which PW-1 sustained simple injuries in his left hand. Further, the petitioner threatened PW-1 to give money in his shirt pocket and snatched Rs.500/- from the shirt pocket of PW-1. The petitioner also threatened the general public in the scene of occurrence.

3.PW-1 the victim gave a complaint [Ex.P-1] before the respondent Police and PW-7 Sub Inspector of Police received the complaint and registered a case in Crime No.592/2006 for an offence under Section 506(ii), 307 and 394 IPC and prepared [Ex.P-5] printed FIR. PW-8, Inspector of Police took up the investigation and went to the scene of occurrence and prepared [Ex.P-2] Observation Mahazar and [Ex.P-6] Rough Sketch in the presence of witness PW-4. On the same day that is on 05.08.2006, PW-8 arrested the petitioner and based on the confession, M.O-1 and 100 rupee currency notes [M.O-2 series] were seized under Seizure Mahazar [Ex.P-4] in the presence of witnesses PW-5 and PW-6.

4.P.W-8 took the statement of the witnesses and on the basis of the investigation made by him, a Final Report came to be laid against the petitioner and the Trial Court took cognizance of the Final Report for an offence under Section 341, 506(ii) and 394 r/w 397 IPC.

5.The prosecution examined PW-1 to PW-8 and marked Exs.P-1 to P-7 and M.O-1 and M.O-2 to substantiate its case. The defense marked Exs.D-1 to D-3. The Trial Court on completion of the evidence questioned the petitioner under Section 313 CrI.P.C regarding the incriminating evidence and the petitioner denied the very occurrence.

6.The Trial Court on examination of the oral and documentary evidence and on considering the facts and circumstances of the case, convicted and sentenced the petitioner in the manner mentioned supra and on appeal filed by the petitioner, the same was confirmed. Aggrieved by the same, the present Criminal Revision Petition has been filed.

7.Mr.R.Shanmugasundaram, learned Senior counsel appearing for Mr.V.Krishnakumar, learned counsel appearing on behalf of the petitioner made the following submissions:

- The entire case was concocted by the respondent Police. The learned Senior counsel for the sake of substantiating his submission, produced a tabulated version of the manner in which cases were concocted by the respondent Police. The same is extracted for their sake of easy reference.

S.N o.	Date of Occurrence	Crime. No. & Offence	FIR Sl.No	Case No.	Compl ai- nant	Stage of the Case
1)	17.05.2006	360/2006 U/s 379 IPC	1515932	C.C.No.238/2006 JM-I, Kanchipuram	Lakshmi	Accused was not found guilty and acquitted by the Trial Court on 04.02.2009.

2)	02.08.06	589/2006 U/s 394 r/w 397 IPC	1515931	C.A.No. 38 of 2010 On the file of Learned District Sessions Judge-II, Kanchipuram Against S.C.No.171 of 2007 On the file of Learned Assistant Sessions Judge, Kanchipuram .	Tmt.Suja	CrI.R.C.No.1264 of 2011. Pending on the file of this Hon'ble Court. Findings of the Appellate Court - Learned District Sessions Judge-II, Kanchipuram in C.A.No.38 of 2010 Trial Court judgment was confirmed by the Appellate Court Findings of the Trial Court- Learned Assistant Sessions Judge, Kanchipuram in S.C.No.171 of 2007 Accused was found guilty and convicted for the offence under Section 394 r/w 397 IPC and sentenced to undergo R.I. For five years and to pay fine of Rs.1500/- in default to under S.I. For one month.
3)	030806	590/2006 U/s.379 & 511 IPC	1515931	C.C.No.235/2006 JM-1, Kanchipuram	Jayan thi	Accused was not found guilty and acquitted by the Trial Court on 04.02.2009.

S. No.	Date of Occurrence	Crime.No. & Offence	FIR Sl.No.	Case No.	Complainant	Stage of the Case
4)	05.08.06	592 506 (ii), 307 & 394 of IPC	15159 34	C.A.No. 39 of 2010 On the file of Learned District Sessions Judge-II, Kanchipuram Against S.C.No.165 of 2007 On the file of Learned Assistant Sessions Judge, Kanchipuram .	Vijaya kumar	CrI.R.C.No.1256 of 2011. Pending on the file of this Hon'ble Court. Findings of the Appellate Court - Learned District Sessions Judge-II, Kanchipuram in C.A.No.39 of 2010 Trial Court judgment was confirmed by the Appellate Court Findings of the Trial Court- Learned Assistant Sessions Judge, Kanchipuram in S.C.No.165 of 2007 Accused was found guilty and convicted for the offence under Section 341 IPC and sentenced to undergo S.I. For Six months and to pay a fine of Rs.500/- in default to undergo further S.I.for one month. Further the accused is convicted for the offence U/s.506 (ii) IPC and sentenced to undergo

						imprisonment for one year and to pay a fine of Rs.500/- in default to undergo further S.I. For one month. Further the accused is convicted under Section 394 r/w 397 IPC and sentenced to undergo R.I. for five years and to pay a fine of Rs.1500/- in default to undergo further simple imprisonment for one month. The sentences are ordered to run concurrently.
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- The learned Senior counsel contend that the entire case projected by the prosecution is so unnatural and doubtful and this Court has to draw a presumption based on the facts of this case and see if such an incident as projected by the prosecution could have really taken place.
- The learned Senior counsel drew the attention of the Court the evidence of PW-1. PW-1 in his evidence has stated that he was proceeding in Gandhi Road to purchase Silk Yarn and at that point of time the incident as recorded supra is said to have taken place. In the cross examination PW-1 has categorically admitted that he is a Coolie engaged in Silk Yarn and he does not own. The contents of the complaint were not written by him and he was only a signatory to the complaint prepared by someone else. For the first time in the cross examination he talks about 100 rupee notes taken by the petitioner from his pocket and no such statement was made during investigation or at the time of chief examination. He further states that he did not go to the hospital and take any treatment for the so called injuries sustained by him.

- The learned Senior counsel also brought to the notice of the Court the evidence of PW-2, and PW-3 and pointed out that they are all stock witnesses who contradicted about the very incident itself.
- The learned Senior counsel also brought to the notice of the Court the evidence of PW-4 to PW-6 who are the Mahazar witnesses and Seizure witnesses whose evidence clearly shows that they were called to the Police Station and their signatures were obtained by the Police and no Seizure or confession or Mahazar were prepared in their presence.
- Yet another important submission made by the learned Senior counsel was the evidence of PW-7, who is the Sub Inspector who had registered the FIR. He was the person who had registered all the four cases against the petitioner and has accepted every fact that was mentioned in the tabular column referred herein above.
- The learned Senior counsel also brought to the notice of the Court the evidence of PW-8 who is the Investigating Officer. He accepts in his cross examination, the fact that even in the complaint the name of the petitioner has been specifically stated. Whereas PW-1 does not know the petitioner before. PW-8 has also spoken about earlier cases filed against the petitioner and the preventive detention order that was passed against the petitioner and the detention of the petitioner. He has further stated that in all the cases, the confession is the same and the witnesses to the Seizure, Mahazar etc., are all the same. He also further states in the cross examination that PW-1 never stated that he sustained injuries after being attacked with M.O-1.

8. Per contra, Mrs. Thankira, learned Government Advocate (Crl. Side) appearing on behalf of the respondent made the following submissions:

- The learned Government Advocate for the respondent contended that the prosecution has sufficiently proved the incident, the recovery and the involvement of the petitioner in the crime.
- The learned Government Advocate further contended that both the Courts below have properly appreciated the facts of the case and the evidence available on record and there is no ground to interfere with the findings of the Courts below. The learned counsel therefore submits that the present Criminal Revision Petition is liable to be

dismissed.

9.This Court has carefully considered the rival submissions made by the learned counsel on either side and also has gone through the evidence available on record.

10.At the out set it must be stated that the whole incident as projected by the prosecution is totally unnatural, artificial. In the present case admittedly PW-1 does not know the petitioner before the incident. PW-1 in his evidence does not even say from where the petitioner came in which vehicle he came and the place at which the incident took place. PW-1 also states that he signed a complaint which was already prepared and he was never examined after the complaint was given. When that is the case it is not known as to how in the complaint the name of the petitioner found a place.

11.PW-2 and PW-3 are clearly stock witnesses. Their evidence also throws a lot of doubt on the prosecution case. Both of them were not even able to say in which direction the petitioner came and both of them did not know the petitioner before the incident and for the first time they identify the petitioner in the Court.

12.Even with regard to recovery of money it is never the case of PW-1 that 100 rupee notes were taken from him whereas for the first time in evidence, this story is introduced.

13.The Mahazar, Confession and Seizure witnesses are all the same witness in all the four cases that were registered against the petitioner. Their evidence shows that all of them were asked to go to the Police Station and their signature was obtained. Therefore, the very Confession and Seizure itself is highly doubtful.

14.The whole case of the prosecution smacks with falsity and total misuse of power by the respondent Police. The respondent Police have cooked up imaginary cases against the petitioner and it all got exposed, in the evidence adduced in this case.

15.The evidence of PW-8 Investigating Officer clearly shows that the prosecution has hopelessly failed to prove the case projected by it.

16.A cumulative reading of the entire evidence clearly goes on to show that the very incident as projected by the prosecution is highly doubtful and unnatural. Section 114 of the Evidence Act states that the Court may presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events in

relation to the facts of the particular case. This Court on the facts of this Case, by applying the process of independent reasoning which the mind of a prudent man would do under similar circumstances, finds that the entire case of the prosecution is false. The incident as projected by the prosecution is so unnatural and highly doubtful. In fact, this Court finds that the respondent Police have misused their power by cooking up one case after another against the petitioner and in the course of doing that, they got very badly exposed in this case and evidence available on record stares at the prosecution. The respondent Police has registered four cases against the petitioner out of which the last three cases are within a span of three days from 2.08.2006 to 05.08.2006. In the present case, the incident is said to have taken place on 05.08.2006. The manner in which the complaint has been prepared clearly goes to show that the prosecution wanted this case to be the ground case to proceed further and detain the petitioner under the Goondas Act. Only for this purpose, the respondent Police have projected a case as if the petitioner threatened the general public with M.O-1 - Veecharival and caused panic. The documents marked on the side of the defense as Exs.D-1 to D-3 clearly exposes this fact.

17.Both the Courts below totally failed to appreciate the evidence available on record. The judgment of both the Courts below suffers from manifest illegality, perversity and infirmity and it has actually resulted in miscarriage of justice for the petitioner.

18.The Criminal Revision Petition is allowed, the judgment of the Trial Court and the Appellate Court is hereby set aside. The bail bond executed by the petitioner shall stand cancelled, and the petitioner is entitled to refund of the fine amount paid by him.

सत्यमेव जयते Sd/-

Assistant Registrar(CS VIII)

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WEB COPY Sub Assistant Registrar

Kp

To

1. The District Sessions Judge No.II,
Sessions Court, Kancheepuram

2.The Assistant Sessions Judge,
Sessions Court, Kancheepuram.

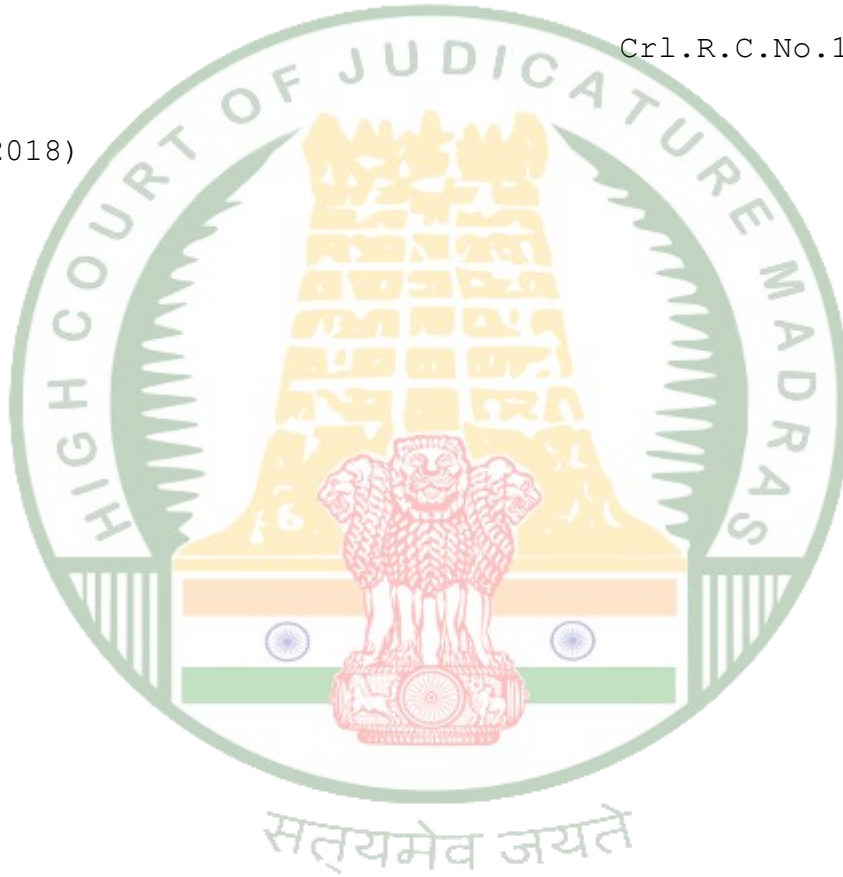
3.The Sub Inspector of Police,
Vishnu Kanchi Police Station,
Kancheepuram.

4.The Public Prosecutor,
High Court Court, Madras.

+lcc to Mr.V.Krishnakumar, Advocate, S.R.No.50210

Cr1.R.C.No.1256 of 2011

MP(CO)
SP(09.08.2018)



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