

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.1264 of 2011

Raja @ Ilaiyaraja

... Petitioner

...Vs...

State
Rep.by
The Sub Inspector of Police,
Vishnu Kanchi Police Station,
Kancheepuram.

... Respondent

(Cr.No.589 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.38/2010 by its judgment dated 20.08.2011, in S.C.No.171 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.38 of 2010, dated 20.08.2011, confirming the

judgment of the learned Assistant Sessions Judge, Kancheepuram, made in S.C.No.171 of 2007, dated 29.08.2008, convicting the petitioner for an offence under Section 394 r/w 397 IPC and imposing a sentence of five years Rigorous Imprisonment and fine of Rs.1500/- in default to undergo Simple Imprisonment for one month.

The case of the prosecution in brief:

2.On 02.08.2006, at about 2.30 p.m, when PW-1 was in he house, the petitioner/accused knocked the door and called PW-1 by name and PW-1 opened the door and enquired the petitioner about his presence. Immediately, the petitioner threw Chilly Powder in the eyes of PW-1 and kicked her in stomach and PW-1 fell down. The petitioner snatched the Thalissaradu weighing 40 grams [M.O-1] from PW-1 and in the course of committing the crime also threatened PW-1 by showing a knife [M.O-2] and the accused escaped from the scene of occurrence.

3.The neighbours hearing the cries of PW-1 came to the scene of occurrence. PW-1 also called her sister-in-law, PW-2 through phone and PW-2 rushed to the house of PW-1 and took PW-1 to the Government Hospital, Kancheepuram in the auto rickshaw belonging to PW-3. PW-1 was admitted in the hospital. On information, the respondent Police came to the hospital at about 10.00 p.m., and recorded the statement of PW-1 and reduced it into a complaint [Ex.P-1].

4.P.W-9, the Sub Inspector of Police who recorded the complaint registered an FIR [Ex.P-7]. The Police went to the scene of occurrence and prepared Observation Mahazar [Ex.P-2] and also Rough Sketch [Ex.P-8]. The accused was arrested on 05.08.2006, and based on his confession statement made in the presence of witness [PW-7] M.O-2-knife seized under Seizure Mahazar [Ex.P-6]. The Police also seized M.O-1 - Thalissaradu from the Pawn Broker Shop P.W-8 under Seizure Mahazar [Ex.P-5].

5.The Investigating Officer [PW-10] took statements from the witnesses and on completion of investigation laid a Final Report and the Trial Court framed charges against the petitioner for an offence under Section 394 r/w 397 IPC.

6.The prosecution examined PW-1 to PW-10 and marked Exs.P-1 to P-8 and also M.O-1 and M.O-2 in order to prove its case. 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.

7.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.

8.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 the sake of easy reference.

S.N o.	Date of Occurrence	Crime. No. & Offence	FIR Sl.No	Case No.	Complainant	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 contended 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 brought to the notice of the Court the FIR that has been registered in this case. The FIR has been registered in FIR Sl.No.1515931 and in the very same serial number another FIR has been registered on 03.08.2006 in a different crime number against the very same petitioner for an offence of attempt of theft in which the petitioner got acquittal. In this regard, the learned Senior counsel also brought to the notice of the Court the evidence of PW-9 who registered the FIR wherein PW-9 has categorically accepted the said fact. PW-9 has also accepted the different FIRs that were registered against the petitioner as capsulated in the above tabular column.
- The learned Senior counsel also brought to the notice of the Court about the fact that even though the offence in question was said to have been committed on 02.08.2006, the earlier FIR registered against the petitioner on 17.05.2006

[3 months prior to the present incident], for an offence of theft was registered in FIR Sl.No.1515932 and where as the later incident which is the subject matter of this criminal revision was registered in FIR Sl.No.1515931. This according to the learned Senior counsel itself will show that an offence has been cooked up against the petitioner who is the son of a counsellor.

- The learned Senior counsel brought to the notice of the Court the evidence of PW-1 wherein she has specifically stated that there is a grill gate in front of the main door which was under lock at the time of the incident. If the grill gate had not been opened, then it is not known as to how the petitioner entered into the house of PW-1. This will also substantiate the false case projected by the prosecution.
- The learned Senior counsel also brought to the notice of the Court the evidence of PW-1 where in the cross examination, she has stated that she informed the doctor that she sustained injuries in the neck while the Thalesaradu was snatched from her and also irritation in the eyes due to the petitioner throwing Chilly Powder in her eyes. Where as the doctor who was examined as PW-6 categorically has stated that PW-1 did not complaint about any injuries in the neck or any irritation in the eyes and the treatment was given only because PW-1 complained body pain and even for treating body pain entry will be made in the Accident Register as minor injury.
- The learned Senior counsel also brought to the notice of the Court that there was no proof to show that M.O.1 - Thalesaradu actually belongs to PW-1 except the ipse dixit of PW-1.
- The learned Senior counsel also brought to the notice of the Court the evidence of PW-4 who is the neighbour. He has stated in his evidence that a number of persons caught hold of the petitioner and were beating him and when enquired they informed that the petitioner had taken away the Thalesaradu. None of these persons were examined and the Investigating Officer [PW-10] in his evidence has categorically said that no such statement was made by PW-4 at the time of investigation.
- The learned Senior counsel also brought to the notice of the Court the evidence of PW-7 who was the witness for the seizure and arrest of the petitioner. In this case, the petitioner was arrested on 05.08.2006. However, PW-7 specifically states in his cross examination that the

respondent Police informed him on 04.08.2006 about the seizure and arrest of the petitioner and where as the signature of PW-7 was obtained on 05.08.2006. The learned Senior counsel also brought to the notice of the Court that this PW-7 was the witness in all the four cases registered against the petitioner.

- The learned Senior counsel brought to the notice of the Court the evidence of PW-8 who is the Pawn Broker. PW-8 has specifically stated that the Police did not seize any receipt books for pledging of the Thalasaradu and he has not signed in any document to evidence the fact that the Thalasaradu was seized from him

- Yet another important submission made by the learned Senior counsel was the evidence of PW-9, 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. PW-9 has also further stated that when he took statement from PW-1, there were no injuries found in her and PW-1 was in perfect state of health and PW-1 is well known to the petitioner since they are actually neighbours.

- The learned Senior counsel also brought to the notice of the Court, the evidence of PW-10 who is the Investigating Officer and pointed out various facets from the evidence which will clearly go on to show that no such incident as projected by the prosecution took place on the so called date of occurrence and all these cases were foisted against the petitioner only to detain him under the Goondas Act.

9. 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.

10.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.

11.At the out set it must be stated that the whole incident as projected by the prosecution is totally unnatural, artificial and highly doubtful. In this case admittedly, the petitioner is well known to PW-1 and he is a neighbour of PW-1. The evidence of PW-1 shows that there was a grill gate in front of the door and the same remained locked at the time when the petitioner is said to have entered into the house of PW-1. If the grill gate is locked, it is not known as to how the petitioner got into the house of PW-1. It is the specific case of the prosecution that the petitioner was caught hold by three or more persons after the incident and was beaten. However, no witness has been examined in this regard. In fact, PW-10 the Investigating Officer categorically states that PW-4 never made such a statement at the time of investigation.

12.PW-1 categorically states that she sustained injury in the neck and also in the abdomen. She further states that the petitioner threw Chilly Powder in her eyes. All these statements are completely falsified by PW-6 doctor who states that he did not find any of the injuries and he merely treated PW-1 for body pain. PW-9 who took the complaint from PW-1 also states that he did not find any injury in PW-1 and she was in a perfect state of health.

13.PW-7 who is the witness for the seizure and arrest categorically states in his evidence that even on 04.08.2006, the Police informed him about the seizure and arrest of the petitioner. When the petitioner was arrested only on 05.08.2006 in this case, it is not known as to how the Police gave such an information to PW-7. Incidentally PW-7 was the seizure and arrest witness in all the four cases that were registered against the petitioner.

14.The evidence of PW-9 completely demolishes the case of the prosecution. PW-9 categorically admits that in FIR Sl.No.1515931 another Crime No.590/2006 was registered against the petitioner on 03.08.2006 and that ended in acquittal. In the present case also, the FIR was registered in the same Sl.No.1515931 in Crime No. 589/2006 on 02.08.2006. It is not known as to how two FIRs were registered in the same serial number. That apart, the earlier case that was registered in Crime No.360/2006 was for an occurrence that took place on 17.05.2006 was registered in FIR Sl.No.1515932. It is not known how the subsequent incident on 02.08.2006, which is the subject matter of this case, got registered in FIR Sl.No.1515931, which is one serial number before Crime No.360/2006.

15.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, by the evidence of PW-9.

16.The evidence of PW-10 Investigating Officer clearly shows that the prosecution has hopelessly failed to prove the case projected by it.

17.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.

18.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.

19.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.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

Kp

To

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

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

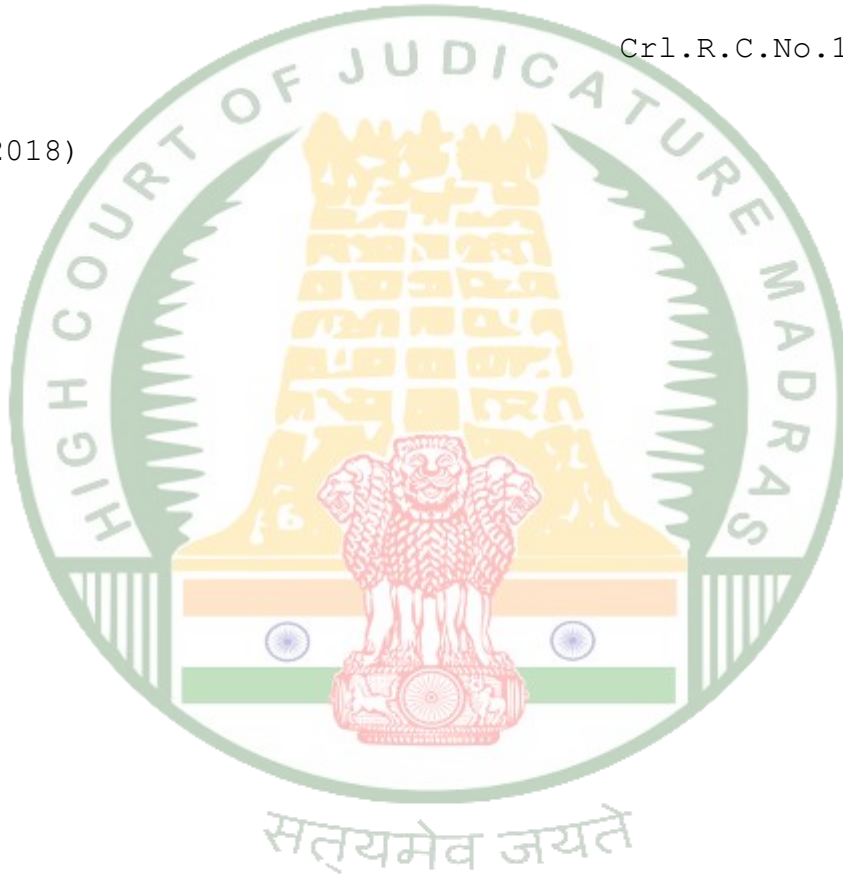
3.The Sub Inspector of Police,
Vishnu Kanchi Police Station,
Kancheepuram.

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

+lcc to Mr.V.Krishnakumar, Advocate, S.R.No.50211

Cr1.R.C.No.1264 of 2011

MP(CO)
SP(09.08.2018)



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