



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 09.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

CrI.O.P. (MD) No.14557 of 2017

in

CrI.A. (MD) SR.No.31262 of 2017

WEB COPY

S.Anthony Samy

:Appellant/PW1

Vs.

1.The State Rep. by,
The Inspector of Police,
Vickramasingapuram Police Station,
Tirunelveli District.
(Crime No.351 of 2012).

:Respondent/Complainant

- 2.Paramasivam
- 3.Samuthiram
- 4.Pavun
- 5.Paramasivan
- 6.Deva Daniel
- 7.Kannan
- 8.Parameswaran
- 9.Barnabas
- 10.Ulaganathan
- 11.Arul Siva
- 12.Durai Raj
- 13.Rajan
- 14.Michael David
- 15.Murugan
- 16.Prince
- 17.Jeyaraj
- 18.Ganapathi
- 19.Jeyakumar
- 20.Satheesh
- 21.Pushpa Raj
- 22.Gnanapaul Sudhagar
- 23.Krishnamani
- 24.Samuel
- 25.Devakani Nadar
- 26.Gnana Isac
- 27.John Rajan
- 28.Madhu Iyappan
- 29.Isac
- 30.Thomas
- 31.Jeyarani
- 32.Chellakani
- 33.Pottu @ Chella Packiyam
- 34.Baby
- 35.Ramani
- 36.Amali



37.Kasthuri
38.Revathi
39.Jeya
40.Masanamuthu
41.Anna Pushpam
42.Kersiyal
43.Roselin Mary

44.Sendu
45.Rasathi
46.Jeeva Rathinam
47.Saroja
48.Victoria
49.Packiyam
50.Kalyani
51.Jeeva Mary
52.Ramalakshmi
53.Poomani
54.Thulasi

: Respondents/Respondents

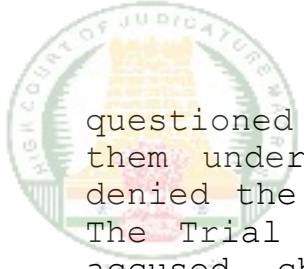
Prayer in Crl.O.P.(MD)No.14557 of 2017:- Petition is filed under Section 378(4) of the Code of Criminal Procedure praying to grant special leave so as to prefer an appeal as against the acquittal judgment delivered by the learned Third Additional Sessions Judge, Tirunelveli, in S.C.No.291 of 2015, vide his judgment dated 11.09.2017, before this Court.

Prayer in Crl.A.(MD)SR.No.31262 of 2017:- Appeal is filed under Section 372 of the Code of Criminal Procedure praying to call for the entire records and set aside the acquittal judgment passed by the learned Third Additional Sessions Judge, Tirunelveli, in S.C.No.291 of 2015 vide his judgment dated 11.09.2017 and consequently, convict the respondent Nos.2 to 54 by imposing maximum punishment to the charges framed against them by the Trial Court.

For Petitioner : Mr.R.Anand
For Respondent No.1 : Mr.C.Mayil Vahana Rajendran,
Additional Public Prosecutor
For Respondents 2 to 54 : Mr.Ananth C.Rajesh

O R D E R

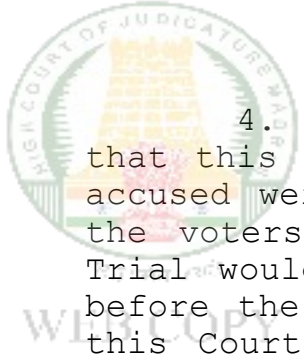
On the complaint lodged by the petitioner, the first respondent police registered a case in Crime No.351 of 2012 and after completing the investigation, filed a charge sheet before the Jurisdictional Magistrate and the case was committed to the Court of Sessions in S.C.No.291 of 2015 and was tried by the learned Third Additional Sessions Judge, Tirunelveli, for the offences under Sections 147, 148, 341, 294(b), 452 of the Indian Penal Code and Section 3 of TNPPDL Act against 53 accused, the respondents 2 to 54 herein. On behalf of the prosecution, 13 witnesses were examined, 10 exhibits and 6 material objects were marked. When the accused were



questioned about the incriminating circumstances appearing against them under Section 313 of the Code of Criminal Procedure, they denied the same. No witness was examined on behalf of the accused. The Trial Court, by judgment dated 11.09.2017, has acquitted the accused, challenging which, the defacto complainant, the petitioner herein, has filed the present appeal under the proviso to Section 372 of the Code of Criminal Procedure with Special Leave Petition.

2. Heard Mr.R.Anand, learned counsel for the petitioner, Mr.C.Mayil Vahana Rajendran, learned Additional Public Prosecutor for the first respondent and Mr.Ananth C.Rajesh, learned counsel appearing for the respondents 2 to 54.

3. It is a trite that Special Leave to Appeal is not automatic and the same can be granted by this Court only if this Court is satisfied that there are prima facie materials to show that the judgment of acquittal suffers from irregularities and illegalities warranting interference. It is the case of the defacto complainant that in the mid night of 03.11.2012, i.e., around 01.00 a.m., 53 persons belonging to his Village came to his house and ransacked the house and cattle shed and caused damage to the properties. It is not the case of the defacto complainant that any of the accused had assaulted him or his family members and, therefore, the accused were not charged for even under Section 323 of the Indian Penal Code. The accused were only charged for unlawful assembly, criminal trespass, criminal intimidation and damage to the properties. The Trial Court had found grave infirmities in the very foundation of the case that was projected by the petitioner/defacto complainant. It is the case of the defacto complainant that the property in question is a pathway and that it belongs to him and that the accused had trespassed into the property to illegally evict him. However, in the cross-examination of the defacto complainant, the accused were able to establish that the civil dispute with regard to the property ended in favour of the accused and against the defacto complainant. Therefore, the Trial Court was of the view that the defacto complainant had strong motive to implicate the accused and all the family members including women and children in order to keep them away from executing the civil Court decree against him. Motive is a double edged weapon. In this case, the accused were able to satisfactorily show that the defacto complainant had a strong motive against them, inasmuch as he having lost in the Civil Courts had set up a false case as if 53 members of the accused family had trespassed and caused damage to the belongings of the defacto complainant. It is seen that the First Information Report in this case itself had reached the jurisdictional Court belatedly. Of course, it is not a Thumb Rule that just because the First Information Report had reached the Court belatedly, the benefit of the same should go to the accused. In the facts of this case, it is the assertion of the accused that the names of the accused have been included subsequently with a help of



4. Mr.R.Anand, learned counsel for the petitioner contended that this plea of the accused cannot be true, because some of the accused were juveniles and their names would not have appeared in the voters list. In this case, had there been any juvenile, the Trial would have been split up as against the juvenile and tried before the Juvenile Court. This has not been done and, therefore, this Court cannot infer that some of the accused were juveniles. That apart, in the cross examination of P.W.1, he was not able to satisfactorily say as to when the complaint that formed the basis of the First Information Report was prepared or who was the Scribe of the complaint. All these infirmities had weighed with the Trial Court for acquitting the accused. On a reading of the Trial Court judgment, this Court does not find any serious infirmity or illegality in the appreciation of evidence by the Trial Court warranting interference. Hence, this is not a fit case to grant leave to appeal and accordingly, the Special Leave Petition stands dismissed. Consequently, the connected Crl.A.(MD)SR.No.31262 of 2017 stands rejected.

5. However, it is seen that there are disputes between the family of the defacto complainant and the accused and the dismissal of this Special Leave Petition is not carte blanche for the accused to take advantage of and create any further problems to the defacto complainant. It must be remembered that the accused have been acquitted on benefit of doubt and not that they are totally innocent. In other words, they have been acquitted for lack of evidence only. Hence, any finding by the Sessions Court with respect to the land dispute will have no bearing in the Civil proceedings between the defacto complainant and the accused. If the accused attempt any aggression on the defacto complainant, the first respondent police shall take immediate action in this regard.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

1.The Third Additional Sessions Judge, Tirunelveli.

2.The Inspector of Police, Vickramasingapuram Police Station,
Tirunelveli District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1CC to Mr.Ananth C Rajesh, Advocate, SR.No. 47397

Order made in
Crl.O.P.(MD)No.14557 of 2017 in
Crl.A.(MD)SR.No.31262 of 2017
Dated: 09.02.2018