

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.03.2019

Coram:

The Honourable Dr.Justice G.Jayachandran

Criminal Appeal No.262 of 2012

S.Yuvakumar

.. Appellant /Complainant

/versus/

1.Githendiran  
2.Senthilkumar  
3.Prabu  
4.Senthilkumar  
5.Vijayakumar  
6.Thangaraj  
7.Murugesh  
8.Thirumurthi  
9.Krishnan  
10.Balan  
11.Durai

... Respondents/Accused

Criminal Appeal has been filed under Section 378 of Criminal Procedure Code praying to set aside the acquittal order dated 17.08.2011 passed by the Chief Judicial Magistrate, Erode, Erode District in C.C.No.104 of 2008.

For Appellant : Mr.C.Prakasam

For Respondents : Mr.N.Manokran

J U D G M E N T

Heard the learned counsel for the appellant and the learned counsel for the respondents.

2. This appeal is directed against the dismissal of the private complaint filed by the appellant herein.

3. The allegations in the complaint is that in the land comprising in survey No.311/1 and 311/3 in Pasuvapatti Village, the complainant have 2/3<sup>rd</sup> shares to draw water from the well and the land measuring 1.5 ares around the well, alleging that on 16.06.2008 night the accused persons had destroyed the well by force using bulldozer and also destroyed Diesel pump sets installed by the complainant to draw water. Since the police

refused to register his complaint, he has resorted to file private complaint before the Judicial Magistrate.

4. To prove the complaint, the complainant has examined himself as PW.1 and two witnesses viz., Somasundaram [PW.2] and Kathirvel [PW.3]. 9 Exhibits were marked. The trial Court after considering the evidence let in by the complainant and the other two witnesses has held that the complainant has not produced any evidence to establish the fact that he is the owner of the land situated in S.No.311/3 and he has some share in the said well. The decree in the civil case between his father and others does not confers or indicate his title over the disputed property or does not establish there was a well in the said survey number. The two witnesses alleged to have seen the occurrence has not been examined and one of the witnesses PW.2 has not supported the case of the complainant. Therefore, acquitted the accused persons not guilty of the alleged offence. Aggrieved by that, the appeal has been preferred by the complainant.

5. It is contended by the learned counsel appearing for the appellant that the trial Court failed to consider the attempt of the complainant to lodge the complaint before the Chennimalai Police on 17.06.2008 and the refusal of the police to register. The complaint but has also found fault of the finding of the trial Court that the complainant has failed to establish the title over the property situated in S.No.311/3 and his share in the well despite documents filed to prove the title and possession through patta and 'A' register extract.

6. After hearing the rival contention, this Court, though there was no material placed by the complainant before the Court to verify whether really the complainant had any right in the said survey number and whether he had any necessity to draw water in the well alleged to have been located in S.No.311/1 and 311/3, directed the learned counsel appearing for the appellant to produce the field map sketch of the survey number to satisfy whether really there was any well which was obliterated by the accused.

7. Today, the learned counsel for the appellant has produced certified photo copies regarding title deed and F.M.Sketch pertains to S.No.311, since these documents were not produced by the complainant before the trial Court, the trial Court has dismissed the complaint. Further the trial Court has also found the allegations of the complainant regarding the offence under Section 323 IPC is not been substantiate evidence.

8. Considering the materials and rival submissions, this Court holds that as far as the findings of the lower Court dismissing the complaint of the appellant does not suffer from any infirmity or illegality. The trial Court has rightly

dismissed the complaint for want of evidence. However, if the complainant has any right in the property, the dismissal of the criminal complaint shall not stand in his way for establishing his right before the civil forum.

9. With the above directions, this Criminal Appeal stands disposed of.

Sd/-

Assistant Registrar (Insp Cell)

//True Copy//

Sub Assistant Registrar

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To

1.The Chief Judicial Magistrate,  
Erode, Erode District

2.The Section Officer,  
Criminal Section,  
High Court, Madras.

+1cc to Mr.C.Prakasam, Advocate, S.R.No. 27619

+1cc to Mr.N.Manokaran, Advocate, S.R.No. 27257

Crl.A.No.262 of 2012

VBA (CO)  
GN(30/04/2019)

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