

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2019

CORAM

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.1534 of 2013

M.Karunanidhi

Petitioner

Vs

1.T.Subramanian
2.Shanmugasundaram
3.State by,
The Inspector of Police,
Sirkazhi Police Station,
Vaitheeswaan Koil P.S.
Crime No.308 of 2004

Respondents/Complainant

Prayer: Criminal Revision filed under Section 397 and 401 of Criminal Procedure Code, to call for the entire records in respect of S.T.C.No.617 of 2006 dated 18.12.2006 on the file of the Judicial Magistrate, Sirkazhi and set aside the order dated 18.12.2006 passed in S.T.C.No.617 of 2006 by the learned Judicial Magistrate, Sirkazhi and consequently to remand the matter for fresh disposal convicting the accused 1 and 2 by allowing the revision case.

For Petitioner :Mr.M.S.Saravanakumar
For R1 :Mr.B.Jawahar
For R2 :Mr.S.Sounthar
For R3 :Mr.T.Shanmugarajeshwaran
Government Advocate (Crl Side)

ORDER

The third respondent police registered a case against the first and second respondents for the offence under Section 447 and 427 IPC, based on the complaint given by the revision petitioner. After completing the investigation, the third respondent laid a charge sheet before the learned Judicial Magistrate, Sirkazhi. The learned Judicial Magistrate, has taken the charge sheet on file in S.T.C.No.617 of 2006. After trial, the learned Judicial Magistrate, found not guilty of the first and second respondent for the offence under Sections 447 and 427 IPC and acquitted them. Challenging the said judgment of the learned Judicial Magistrate, Sirkazhi, the defacto complainant has filed the present Criminal Revision Case before this Court.

2 The learned counsel for the revision petitioner would submit that the revision petitioner has already got a decree in O.S.No.449 of 1985, and after getting the decree, they delivered the property and the surveyor also laid the boundary stone. Subsequently, on 28.11.2004 the respondent Nos.1 and 2/accused removed the boundary stone and also cut the wire fixed with the stones. Therefore, the defacto complainant gave a complaint before the third respondent. The third respondent police conducted preliminary enquiry and registered a case on 17.12.2004 and after investigation, the third respondent police has laid a charge sheet. Though, the prosecution has proved its case beyond reasonable doubt, the learned Judicial Magistrate, Sirkazhi, acquitted the respondent Nos.1 and 2/accused on the ground that they are the public servant and they are working as a teacher and they could not have removed the stones and they could not have violated the Court order. The property was delivered by the amena and the surveyor after measuring the property, put a stone. Subsequently, the respondent Nos.1 and 2 removed the stone. The learned Judicial Magistrate failed to consider the fact that the petitioner has got a decree from the competent Court and also the Court amena has delivered all the property. Subsequently, the stones were removed and damaged, except the respondents 1 and 2, no one could have done the above act. The learned Judicial Magistrate disbelieved the case of the petitioner only for the reason that there is a delay in registering the case. Therefore, the judgment passed by the learned Judicial Magistrate, warrants interference by this Court.

3 The learned counsel appearing for the first and second respondents would submit that except P.W.1, there is no eye witnesses and no one has supported the case of the prosecution. There is contradiction between the evidence of P.W.1 and P.W.2 . With regard to the author of the complaint, P.W.1 and P.W.2 are the interested witnesses and even the materials available on record show that P.W.1 has not seen the occurrence and they are under the pretext that the respondents 1 and 2 only removed the stone. There is no materials to show that the respondent Nos.1 and 2 have only removed the stone and boundary fence. Therefore, the learned Magistrate has rightly appreciated the evidence and found that the prosecution has not proved its case beyond reasonable doubt and acquitted the respondent Nos.1 and 2, which does not warrants any interference by this Court.

4 Heard the learned counsel for the petitioner and the learned counsel for the respondent Nos.1 and 2 and perused the materials available on record.

5 The trial Court, after appreciating all the records and facts of the case, found that the prosecution has failed to

prove its case beyond reasonable doubt and there are material contradictions between the prosecution witnesses and there is no corroboration and also none of the witnesses have spoken that they have seen the occurrence and state that the respondent Nos.1 and 2 only have damaged and removed the survey stone and also the boundary fence and therefore, acquitted the accused.

6 This Court, while exercising the revisional jurisdiction, cannot exercise the power of the appellate Court and re-appreciate the entire evidence. The trial Court has appreciated the entire evidence placed before it. On reading of the judgment of the trial Court, this Court does not find any perversity and also there is no reason to take a different view. There is no specific overtact against the respondents No.1 and 2. In the absence of any eye witnesses and corroboration, the trial Court rightly appreciated the evidence and the benefit of doubt was also extended in favour of respondent Nos.1 and 2/accused. Generally, the revisional court will not interfere with the order of acquittal, unless there is perversity on the same.

7 This Court does not find any perversity in appreciation of the evidence by the court below and there is no merit in the revision case. Hence the criminal revision case is dismissed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1. The learned Judicial Magistrate,
Sirkazhi
2. The Inspector of Police,
Sirkazhi Police Station,
Vaitheeswaan Koil P.S.
3. The Public Prosecutor,
High Court, Madras.

+1 CC to Mr.M.S.Saravanakumar, Advocate sr 20154.

Cr1.RC.No.1534 of 2013

VGII (CO)
SP(04/02/2020)