

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.08.2019

CORAM

THE HONOURABLE MR. JUSTICE P.N.PRAKASH

Crl.R.C.No.397 of 2019

Leo Charles
S/o.Arokiyasamy

... Petitioner

-Vs-

M.Vijayakumar
S/o.Muthaiah

.. Respondent

Criminal Revision Petition filed under section 397 r/w 401 of the Code of Criminal Procedure to set aside the judgment dated 25.01.2019 passed in Crl.A.No.122 of 2018 on the file of the II Additional District Court, Salem, confirming the judgment dated 04.05.2016 passed in C.C.No.384 of 2011 on the file of the Judicial Magistrate Court No.II, Salem.

For Petitioner : Mr.V.K.Sathiamurthy

For Respondent : Mr.M.Saravanakumar

O R D E R

This Criminal Revision has been filed to set aside the judgment dated 25.01.2019 passed in Crl.A.No.122 of 2018 on the file of the II Additional District Court, Salem, confirmed the judgment dated 04.05.2016 passed in C.C.No.384 of 2011 on the file of the Judicial Magistrate Court No.II, Salem.

2. For the sake of convenience, the petitioner and the respondent will be referred to by their name.

3. On the complaint lodged by M.Vijayakumar, a case in Crime No.2221 of 2009 under Section 380 IPC was registered by the police against Leo Charles and others. During the course of investigation, it came to light that Vijayakumar had given a false complaint. Therefore, the police filed a final report in

C.C.No.168 of 2010 before the Judicial Magistrate No.II, Salem, against Vijayakumar for the offence under Section 211 IPC. Challenging the prosecution, Vijayakumar filed Crl.OP.No.19968 of 2010 under Section 482 Cr.P.C, in which, this Court, by an order dated 22.09.2010 quashed the police charge sheet on the ground that for the offence under Section 211 IPC, a complaint has to be filed before the concerned Court and not a final report by the police.

4. While disposing Crl.OP.No.19968 of 2010, this Court made the following observation on 22.09.2010 :

"Considering the above, liberty is given to the accused person in the original crime number to institute a complaint. In the result, the Criminal Original Petition is allowed and the proceedings in C.C.No.168 of 2010 on the file of the learned Judicial Magistrate No.II, Salem is quashed".

5. Based on the aforesaid observation, Leo Charles initiated a prosecution in C.C.No.384 of 2011 before the Judicial Magistrate No.II, Salem, under Section 211 IPC against Vijayakumar, in which, Vijayakumar was acquitted on 04.05.2016. Challenging the acquittal, Leo Charles filed Crl.A.No.122 of 2018 before the Court of Sessions, Salem under the proviso to 372 Cr.P.C. The appeal was made over to the II Additional District and Sessions Court, Salem and was dismissed on 25.01.2019. Challenging the acquittal of Vijayakumar by the Courts below, Leo Charles has filed the present Criminal Revision under Section 397 r/w 401 Cr.P.C.

6. Heard Mr.C.Rajan, learned counsel appearing for Leo Charles and Mr.M.Saravanakumar, learned counsel appearing for Vijayakumar.

7. During the course of arguments, it came to the notice of this Court that Vijayakumar was in the habit of addressing communications against the learned counsels appearing against him and also against the Presiding Officers. Therefore, this Court directed the presence of Vijayakumar. Accordingly, Vijayakumar appeared before this Court and filed an affidavit dated 24.06.2019 wherein in Paragraph No.3, he has stated as follows:

"3. I humbly submit that I had wrote all those allegations without realizing the impact of seriousness of bald allegations against the Hon'ble former Justices. It is highly condemnable one and I regret the same. I pray that this Hon'ble Court that I beg to this Hon'ble Court and I tendering unconditional apology for my scandalous, bald allegations raised in the criminal proceedings. I apologize for raising scandalous allegations against the counsel on record of the petitioner herein. I undertake that I will not involve above said manner before this Hon'ble Court or any other Court in future".

8. Taking into consideration the fact that Vijayakumar is 72 years old, this Court does not want to precipitate the matter further and hence, his apology affidavit is accepted. Now, coming to the merits of the revision case at hand, it is trite that while exercising powers under Section 397 r/w 401 Cr.P.C., this Court cannot convert an order of acquittal into one of conviction and that this Court can order only re-trial.

9. In *Girish Kumar Suneja Vs. Central Bureau of Investigation*, (2017) 14 SCC 809, the Supreme has held that the revisional jurisdiction is only an entitlement and not the right. At this juncture, it is relevant to extract Paragraph No.27 of the above said decision:

"27. Our conclusion on this subject is that while the appellants might have an entitlement (not a right) to file a revision petition in the High Court but that entitlement can be taken away and in any event, the High Court is under no obligation to entertain a revision petition - such a petition can be rejected at the threshold. If the High Court is inclined to accept the revision petition it can do so only against a final order or an intermediate order, namely, an order which if set aside would result in the culmination of the proceedings."

10. The presumption of innocence is a human right and when two Courts have acquitted the accused, it may be a travesty of justice to interfere with the orders passed by the Courts below in exercise of its revisional jurisdiction and direct re-trial.

11. In the result, this Criminal Revision case fails and the same is dismissed.

Sd/-

Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

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To

1.The II Additional District Court,
Salem.

2.The Judicial Magistrate No.II,
Salem.

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

+2cc to Mr.C.Rajan, Advocate SR.No.68306

+1cc to Mr.M.Saravanakumar, Advocate SR.No.68542

सत्यमेव जयते

Cr1.R.C.No.397 of 2019

SS(CO)

GMV(12/09/2019)

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