



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **27.07.2019**

CORAM :

THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

Crl.A. (MD) No.569 of 2008

Rajasekaran ... Appellant/Petitioner

vs.

1.Kathiresa Nadar

2.Ganesan

3.Subramanian

4.Manoharan

5.Jawahar

6.Gnanathiraviyam

7.Shanmugasamy

8.K.Selvaraj

9.P.Lingavel Murugan ..Respondents

PRAYER:- Criminal Appeal filed under Section 341 of the Code of Criminal Procedure, to set aside the order dated 20.11.2008 passed in Cr.M.P.No.213 of 2001 by the learned Principal Sessions Judge, Tirunelveli.

For Appellant : No appearance
For R1 to R6, R8 & R9 : No appearance
For R7 : Died

JUDGMENT

This criminal appeal has been filed to set aside the order dated 20.11.2008 passed in Cr.M.P.No.213 of 2001 by the learned Principal Sessions Judge, Tirunelveli.

2.According to the appellant, he has filed a petition in Cr.M.P.No.213 of 2001 under Section 195(1) (b) (iii) r/w Section



340 and 343 of Cr.P.C., to initiate action against the respondents for the offences punishable under Section 211 of IPC. After completing trial, by order dated 20.11.2007, the learned Principal Sessions Judge, Tirunelveli, dismissed the said petition. Challenging the same, the present appeal has been filed.

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3.From the records, it is seen that the appeal is pending from the year 2008, for more than 11 years. Further, it is seen that when the matter was taken up on earlier occasion, i.e., on 19.01.2019 and 23.02.2019, none appeared on behalf of either side and subsequently, when the matter was taken up for hearing on 13.04.2019, the learned counsel for the appellant has withdrawn his Vakalat and hence, by recording such withdrawal, this Court directed the Registry to remove the name of the learned counsel appearing for the appellant and to print the name of the appellant in the cause list and list the matter. Thereafter, when the matter was taken up for hearing on 22.06.2019, none appeared on behalf of the respondents and hence, this Court again directed the Registry to remove the name of the learned counsel appearing for the respondents and to print the name of the respondents in the cause list and to post the matter for disposal and accordingly, name of the respective parties have been printed in the cause list and the matter is listed for disposal, today.

4.Today, when the matter is taken up for hearing, none appeared on behalf of either side. Therefore, this Court is of the view that no useful purpose will be solved in keeping the matter pending for years together and is inclined to dispose of the appeal on merits with the available materials on record.

5.On a careful perusal of the records, it is seen that according to the appellant, all the respondents have entered into criminal conspiracy and lodged a false complaint against him and 7 others and the same has been registered in Crime No.248 of 1995 on the file of V.K.Puram Police Station for the offences punishable under Sections 147, 148, 324, 506(ii) IPC and 3 (i) (x) of SC/ST Act. Based on the aforesaid complaint, he was remanded in the said case.

6.Further, it is seen that the case of the prosecution is that on 29.07.1995 one Kulathumani @ Venniraj was assaulted by the appellant and others and they abused him by using caste name and the case was taken on file in S.C.No.300 of 1996. After trial, the trial Court acquitted the appellant and others from all charges. Further, it is seen that the defacto complainant in that case has suppressed the material facts and obtained the community certificate and subsequently, the community certificate was cancelled by the competent authority.



7.In that case, in the Accident Reg.No.728193 dated 30.07.1995, it has been clearly stated that the occurrence has taken place on 30.07.1995 at 09.45 a.m, whereas, in the written complaint filed by the defacto complainant, it is stated that the occurrence had taken place at 10.00 p.m., on 29.07.1995. Further, the respondents have conspired together and produced the fake community certificate of the defacto complainant and given a false evidence before the Court below. Thereafter, the appellant has filed a petition in Cr.M.P.No.213 of 2001 under Section 195(1) (b) (iii) r/w Section 340 and 343 of Cr.P.C., to initiate action against the respondents for the offences punishable under Section 211 of IPC. During enquiry, on the side of the appellant, he had marked the documents as Ex.P1 to Ex.P32 and on the side of the respondents, they had marked one document. After hearing the arguments made on either side and perusing the records, the learned Principal Sessions Judge has dismissed the said petition, against which, the present appeal has been filed.

8.The main contention of the appellant is that based on the complaint given by the respondents, a case in Crime No.248 of 1995 has been registered and the same has been taken on file in S.C.No.300 of 1996 against the appellant. After trial, the learned Principal Sessions Judge, has acquitted the appellant and others from all the charges. Thereafter, the appellant has filed a petition in Cr.M.P.No.213 of 2001 to initiate action against the respondents and after trial, the learned Judge, has dismissed the said petition. Challenging the same, the appellant is before this Court.

9.In Cr.M.P.No.213 of 2001, the petitioner therein has sent the notice [Ex.P17] to all the respondents, however, no reply was sent towards the same. Therefore, non replying to the notice, by the respondents shall not amount to conspiracy made by the respondents so as to file a false case against the petitioner. Hence, the learned Principal Sessions Judge found that the petitioner has not proved the *prima facie* case that the respondents conspired together to falsely implicate the petitioner in a criminal proceedings by creating and producing false and forged documents and found that the petitioner has miserably failed to establish the case so as to attract the offence under Section 211 of CPC and therefore, the learned Judge dismissed the said petition.

10.In view of the foregoing discussions and considering the facts and circumstances of the case that without any progress, the appeal is pending for more than 11 years, this Court does not find any sound reason and ground to interfere with the order dated 20.11.2008 passed in Cr.M.P.No.213 of 2001 by the learned Principal Sessions Judge, Tirunelveli and there is no merit in



this appeal.

11.In the result, this Criminal Appeal is dismissed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

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To

- 1.The Principal Sessions Judge,
Tirunelveli.
- 2.The Section Officer (2 copies),
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

Crl.A. (MD) No.569 of 2008
27.07.2019

KM/ (03.10.2019) 4P 4C