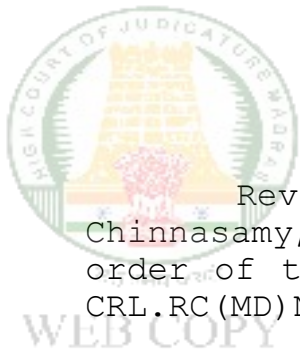




Bail Slip

Revision Petitioner/3rd Accused, namely Chinna Thambi @ Chinnasamy, S/o.Subbiah was directed to be released on bail by the order of this Court dated 12.12.2014 made in MP(MD)No.1 of 2014 in CRL.RC(MD)No.475 of 2014.

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:22.10.2019**

CORAM:

**THE HONOURABLE MR.JUSTICE B.PUGALENDHI
Crl.R.C(MD)No.475 of 2014**

Chinna Thambi @ Chinnasamy ... Petitioner/3rd Respondent/3rd Accused

Vs.

1.V.V.Chellamuthu ... 1st Respondent/Appellant/Defacto Complainant

2.State through SI of Police,
M.Kallupatti Police Station,
[Crime No.30 of 2004]

... 2nd Respondent/4th Respondent/Complainant

Prayer: Criminal Revision Case has been filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records relating to the judgment dated 15.10.2014 made in C.A.No.46 of 2012 of the V Additional District and Sessions Court of Madurai, by partly setting aside the judgment dated 04.10.2011 in C.C.No.248 of 2004 on the file of the District Munsif cum Judicial Magistrate No.I, Usilampatti and set aside the same as illegal.

For Petitioner : Mr.K.Shanmugaraja

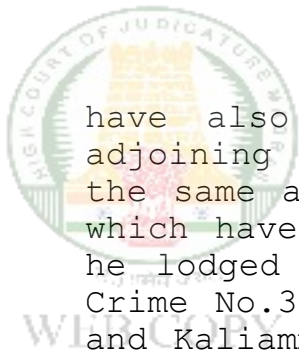
For Respondent : Ms.S.Bharathi,

No.2 Government Advocate (Crl Side)

ORDER

The Criminal Revision Case has been filed by the accused No.3, as against the conviction and sentence imposed by V Additional District and Sessions Court, Madurai in C.A.No.46 of 2012.

2.The case was registered on the complaint of one Chella Muthu in Crime No.30 of 2014 on the file of the respondent Police on 24.05.2004 that on 13.03.2004, the Tahsildar, Peraiyur and Firka Surveyor Ezhumalai have measured the land and demarcated property and also laid stones. According to the complainant, he is having land to an extent of 2.70 Acres in Survey No.176/A, 1E3, 4A, 4B, 4C at Mallapuram Village and that land was also measured by the Tahsildar, Peraiyur along with Firka Surveyor on 13.03.2004 and they



have also planted survey stones near all the four sides. The adjoining land owner Nagan, Kaliammal, Oorkavalan have opposed to the same and on 14.03.2004 they have also destroyed survey stones, which have been laid by the Tahsildar and the Surveyor. Therefore, he lodged a complaint on 23.05.2004 and a case was registered in Crime No.30 of 2004, as against the accused No.4 Nagan, Oorkavalan and Kaliammal under Section 448, 434 and 109 IPC. After completion of investigation, final report was filed as against four persons and this petitioner, son-in-law of Nagan [A1] has been arrayed as A4 in the final report.

3.During the trial, 11 witnesses were examined and 9 documents were marked on the side of the prosecution and the photographs taken from the place of occurrence was also produced as material objects. In conclusion of the trial, the trial Court by order dated 04.10.2011 in C.C.No.248 of 2004, acquitted all the accused from the charges levelled against them.

4.Aggrieved over the same, the defacto complainant Chellamuthu preferred an appeal before the V Additional District and Sessions Judge, Madurai in C.A.No.46 of 2012. The appellate Court considering the evidence in detail, has held that the charge under Section 448 IPC cannot be maintained, since, the only overtact against them is they have trespassed to the land and therefore, closed the charge under Section 448 IPC against all the accused and the appellate Court acquitted the accused from the charge under Section 109 IPC. However, the appellate Court found the petitioner as well as other accused have committed offence under Section 434 IPC and convicted and sentenced them to undergo six months rigorous imprisonment with a fine of Rs.1,000/- and in default of payment fine amount, one month simple imprisonment was also ordered.

5.As against the order of conviction passed by the appellant Court, the present revision case has been filed.

6.Heard Mr.K.Shanmugaraja, learned Counsel for the revision petitioner and Mrs.K.Barathi, learned Government Advocate (Crl Side) appearing for the State.

7.The learned Counsel for the petitioner would contend that this petitioner is not arrayed as an accused in the FIR and later, he has been implicated as an accused in the final report. The occurrence has taken place on 14.03.2004 and the complaint was lodged only on 23.05.2004, after a delay of 70 days and this delay has not been explained by the prosecution.

8.Even according to the prosecution case, the accused were standing along with other accused and however, he was convicted for the offence under Section 434 IPC that he has beaten the accused. However, during the cross examination PW8 would admit that he has uttered the words uttered by this accused instigating the



accused to commit the offence. The learned Counsel for the petitioner has also mainly contended that there is no documents filed on the side of the prosecution that no application was made for measuring the land by the complainant and there is no proof for the payment of receipt for measuring the land on the previous day.

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9.It is pointed out that the Deputy Superintendent of Police, Mariyappan of that area and on his instructions, in order to curb the land from the accused, the case has been foisted at the instructions of the Deputy Superintendent of Police one Mariyappan.

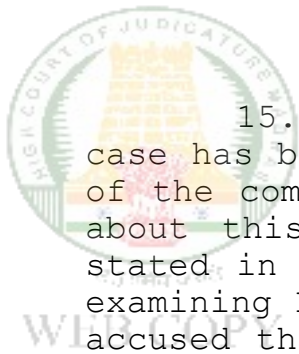
10.Per contra, the learned Government Advocate would submit that the prosecution has established its case through the evidence of PW8 and the evidence of PW8 has been corroborated by the evidence of PW1. She also stated that the land was measured by the Thasildar on the previous day on 13.03.2004 and the survey stones have been laid and the accused have objected to the same on that day. Coupled with the fact that on the next day that on 14.03.2004, the petitioner along with other accused went to the place of occurrence and trespassed to the land of the complainant and has destroyed survey stones laid by the officials concerned and therefore, the offence committed by the accused has been established beyond reasonable doubt and there is no necessity for interfering with the finding of the appellate Court.

11.Heard the learned Counsel on either side and perused the materials placed on record.

12.Though final report was filed as against the petitioner and others for the commission of offence under Sections 440,109 and 434 IPC, the trial Court acquitted all the accused from the charges framed against them. However, the appellate Court allowed the appeal by acquitting the appellants from the charges under Sections 448 and 109 IPC, and found the appellants guilty for the offence under Section 434 IPC as stated supra.

13.The defacto complainant and the first accused Nagan are adjacent land owners. As per the evidence of PW2, the Tahsildar, the measurement was taken on the previous day and the survey stones have also been laid. The learned Counsel for the petitioner objected that there is no necessity for the Tahsildar to be present while surveying the lands. However, the presence of the Tahsildar and the evidence would disclose that it has been foisted at the instance of the Deputy Superintendent of Police, who is a relative of the complainant.

14.It is the case of the petitioner that in order to grab the lands of the first accused, at the instance of the Deputy Superintendent of Police one Mariyappan, who is a close relative of the defacto complainant, a false case has been foisted.



15.The occurrence has taken place on 14.03.2004. However, the case has been registered only on 23.05.2004. At the time of lodging of the complaint PW1 in the complaint Exp3 has not stated anything about this accused and the role of the petitioner has not been stated in the complaint Exp3, however, during the investigation by examining PW8, the name of this petitioner has also been added as an accused that he was also present on 14.03.2004 at the place of the occurrence along with other accused and also instigated other accused. This evidence of PW8 was recorded on 23.05.2004 by the investigating officer. Though the statement was stated to have been recorded from the eye witness namely, PW8 on 23.05.2004, the said statement of the investigating officer reached the Court only on 08.10.2004.

16.The petitioner is the son-in-law of the first accused Nagan and he is also working as an Accounts Officer. This petitioner's name has not been shown in the complaint and based on the statement of PW8 the petitioner is added as accused, there is no reason for not impleading the petitioner as an accused on the date of the complaint, which was registered on 23.05.2004, when PW8 was also examined by the investigating officer on 23.05.2004.

17.Though the occurrence has taken place on 14.03.2004, the complaint was lodged only on 23.05.2004, after 76 days. According to the complainant, he lodged the complaint immediately to the occurrence and receipt was also given and this complaint was registered belatedly. This version of the complaint was also accepted by the trial Court and believed that there is no delay in registering the complaint. A perusal of Exp3 complaint would show that it was preferred only on 23.5.2004. While so, there is no explanation that the complaint was filed immediately after the occurrence on 14.03.2004. Then it has to be taken in favour of the accused that the previous complaint lodged prior to 23.05.2004 has been suppressed by the prosecution.

18.This is a case where there is a delay of 76 days in preferring the complaint. Moreover, the complainant is not an eye witness and the occurrence came to his knowledge only through PW8. This fact that PW1 came to know about the occurrence through PW8 has not been stated in the complaint Exp3. Moreover, PW8 was examined on the very same day, on the date on which the complaint was registered. However, there is no reference about the name of the petitioner in the complaint [Exp3]. Therefore, the trial Court rightly acquitted this petitioner and other accused from the charges. However, the appellate Court by reversing the findings of the trial Court convicted this petitioner and other other accused for the offence under Sections 434 IPC.

19.It is necessary to bear in mind the principles governing the appeal against acquittal, as laid down by the Hon'ble Supreme Court in **V. Sejjappa v. State [(2016) 12 SCC 150]**, wherein, the



Hon'ble Supreme Court has followed its own decision in **Muralidhar v. State of Karnataka [(2014) 5 SCC 730]**. The guidelines issued in the said decision are extracted hereunder:

"23. ... (i) There is presumption of innocence in favour of an accused person and such presumption is strengthened by the order of acquittal passed in his favour by the trial court;

(ii) The accused person is entitled to the benefit of reasonable doubt when it deals with the merit of the appeal against acquittal;

(iii) Though, the powers of the appellate court in considering the appeals against acquittal are as extensive as its powers in appeals against convictions but the appellate court is generally loath in disturbing the finding of fact recorded by the trial court. It is so because the trial court had an advantage of seeing the demeanour of the witnesses. If the trial court takes a reasonable view of the facts of the case, interference by the appellate court with the judgment of acquittal is not justified. Unless, the conclusions reached by the trial court are palpably wrong or based on erroneous view of the law or if such conclusions are allowed to stand, they are likely to result in grave injustice, the reluctance on the part of the appellate court in interfering with such conclusions is fully justified; and

(iv) Merely because the appellate court on reappreciation and re-evaluation of the evidence is inclined to take a different view, interference with the judgment of acquittal is not justified if the view taken by the trial court is a possible view. The evenly balanced views of the evidence must not result in the interference by the appellate court in the judgment of the trial court."

20. In yet another decision in the case of **Chandrappa Vs State of Karnataka [(2007) 4 SCC 415]**, the Hon'ble Supreme Court has laid down the following general principles regarding powers of the appellate Court while dealing with an appeal against an order of acquittal:

"(1) An appellate Court has full power to review, re-appreciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts on limitation restriction or condition on exercise of such power and an appellate Court on the evidence before it may reach its own conclusion, both on questions of fact and of law.



(3) Various expressions, such as, 'substantial and compelling reasons', 'good and sufficient grounds', 'very strong circumstances', 'distorted conclusions', 'glaring mistakes', etc are not intended to curtail extensive powers of an appellate Court in an appeal against acquittal. Such phraseologies are more in the nature of 'flourishes of language' to emphasise the reluctance of an appellate Court to interfere with acquittal than to curtail the power of the Court to review the evidence and to come to its own conclusion.

(4) An appellate Court, however, must bear in mind that in case of acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent Court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the trial Court.

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate Court should not disturb the finding of acquittal recorded by the trial Court."

21. Without following the ratio laid down by the Hon'ble Supreme Court in deciding the appeal against the acquittal the appellate Court has convicted the petitioner.

22. The available evidence are not sufficient to slap a conviction and therefore, this Court is of the view that the conviction imposed by the appellate Court is liable to be set aside. Accordingly, the judgment dated 15.10.2014 made in C.A.No.46 of 2012 of the V Additional District and Sessions Court of Madurai is set aside and the criminal revision case is allowed and the bail bonds, if any, shall stand cancelled.

Sd/-

Assistant Registrar (crl.side)

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Sub Assistant Registrar(CS)

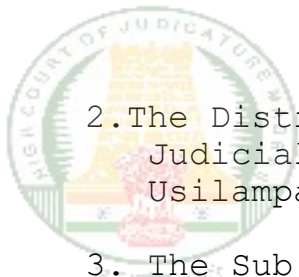
Dsk

To

1. V Additional District and Sessions Judge,

Madurai

<https://hcservices.ecourts.gov.in/hcservices/>



2.The District Munsif cum
Judicial Magistrate No.I,
Usilampatti

3. The Sub Inspector of Police,
M.Kallupatti Police Station,
Madurai District'

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

5.The Record Keeper (2copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.K.SHANMUGA RAJA, Advocate (SR-93712[F] dated
22/10/2019)

Crl.R.C(MD)No.475 of 2014
22.10.2019

MK (13.02.2020) 7P 8C