

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.A.No.132 of 2012

Major K.Mathews

..Appellant/Complainant

Vs.

1. S.Sivaraman

2. S.Ramalingam

3. M.P.Subramanian

4. S.Manivannan

5. T.A.Sathiapalan (deceased)

6. E. Raghavan (deceased)

7. D.Kuppusamy (deceased)

8. A.Gadhadharan

9. C.G.Bhaskar (deceased)

10. S.Varadharajan

..Respondent/Accused

Criminal Appeal filed under Section 378 Cr.P.C. against the judgment and order dated 10.10.2011 passed in C.C.No.4602 of 2001 on the file of the XXIII Metropolitan Magistrate Court, Saidapet, Chennai.

For Appellant : Mr.B.Kumarasamy
Amicus Curiae

For Respondent : Mr.S.N.Thangaraj

JUDGMENT

Challenge in this criminal appeal is to the judgment and order dated 10.10.2011 passed in C.C.No.4602 of 2001 on the file of the XXIII Metropolitan Magistrate Court, Saidapet, Chennai.

2. Major K.Mathews initiated a prosecution in C.C.No.4602 of 2001 before the XXIII Metropolitan Magistrate Court, Saidapet, Chennai, for the offences under Sections 120-B, 500, 501, 506 (I) and 507 r/w 34 IPC, against ten accused/respondents herein. During trial, T.A.Sathiapalan (A5), E. Raghavan (A6), D.Kuppusamy (A7) and C.G.Bhaskar (A9) died and the case proceeded against the rest of the accused.

3. Before the trial Court, Major K.Mathews examined himself as PW1 and marked one exhibit. On behalf of the accused, no witness was examined nor any document marked.

4. After considering the evidence on record and hearing either side, the trial Court, by judgment and order dated 10.10.2011, acquitted the accused of all the offences.

5. Challenging the acquittal, Major K.Mathews has preferred the present appeal after obtaining special leave.

6. When this matter was posted for final disposal on 05.02.2019, there was no representation for Major K.Mathews. Again on 09.01.2020 also, there was no representation for him. Under Section 386 Cr.P.C., the Court is required to hear the appellant or his pleader only if he appears. If he does not appear, the Court can peruse the records and pass appropriate orders. However, on 09.01.2020, this Court appointed Mr.P.Kumarasamy, Advocate (Enrollment No.1156 of 1993) as counsel for Major K.Mathews to prosecute this appeal and adjourned the case.

7. Heard Mr.P.Kumarasamy, learned Amicus Curiae for the appellant and Mr.S.N.Thangaraj, learned counsel for the accused.

8. This Court perused the evidence on record and the exhibits marked in the trial Court.

9. It is the case of Major K.Mathews that he was elected as the President of Annaji Nagar Welfare Association for the period 1998-2000 and was re-elected for the period 2000-2002. While so, it is alleged that the accused/respondents herein printed and circulated a defamatory pamphlet (Ex-P1) dated 24.02.2001 making false imputations against Major K.Mathews with the intention of defaming him. It may not be necessary to advert to the allegations in the impugned defamatory pamphlet (Ex-P1), since Major K.Mathews has not proved that the accused had in fact issued it.

10. This Court perused the impugned pamphlet (Ex-P1). It does not contain the name of any of the accused and it is an anonymous pamphlet.

11. In the absence of Major K.Mathews establishing the authorship of the impugned pamphlet (Ex-P1), the accused cannot be convicted for defamation. The evidence on record shows that there was dispute between Major K.Mathews and the members of the Welfare Association and during that time, he had also filed a suit against some of the members of the Welfare Association in O.S.No.2403 of 2001 in the City Civil Court, Chennai.

12. The trial Court has taken all these factors into consideration and acquitted the accused of all the charges.

13. In this context, it may be apposite to refer to the judgment of the Supreme Court in Arulvelu and another Vs. State represented by the Public Prosecutor and another¹, wherein, in paragraph no.36, it is held as follows:

"36. Careful scrutiny of all these judgments lead to the definite conclusion that the appellate court should be very slow in setting aside a judgment of acquittal particularly in a case where two view are possible. The trial court judgment can not be set aside because the appellate court's view is more probable. The appellate court would not be justified in setting aside the trial court judgment unless it arrives at a clear finding on marshalling the entire evidence on record that the judgment of the trial Court is either perverse or wholly unsustainable in law."

14. In view of the above, this Court does not find any infirmity in the judgment and order passed by the trial Court, warranting interference.

As a result, this criminal appeal is dismissed as being devoid of merits. The acquittal of the accused by the trial Court stands confirmed. This Court places on record its appreciation to Mr.P.Kumarasamy, Advocate (Enrollment No.1156 of 1993), for his meticulous preparation and presentation of the case. The Tamil Nadu State Legal Services Authority, Chennai, is directed to pay a sum of Rs.5,000/- as remuneration to Mr.P.Kumarasamy.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

1 (2009) 10 SCC 206

To

1. The XXIII Metropolitan Magistrate,
Saidapet, Chennai.

2. The Member Secretary,
Tamil Nadu State Legal
Services Authority,
North Fort Road,
High Court Campus,
Chennai - 600 104.

3. The Deputy Registrar,
(Crl.Side)
Madras High Court,
Chennai - 104.

} with a direction to return
the original records to the
trial Court

+1 CC to Mr.S.N.Thangaraj, Advocate sr 4689.

+1 CC to Mr.B.Kumarasamy, Advocate sr 4590.

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RP(CO)
SP(04/03/2020)