

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CrI.A.No.134 of 2012

Major K.Mathews

..Appellant/Complainant

Vs.

1. S.Sivaraman
2. T.A.Sathiapalan (deceased)
3. V.Subramanian (deceased)
4. A.Gadhadharan
5. S.Ramalingam
6. M.P.Subramanian
7. S.Manivannan
8. E.Raghavan (deceased)
9. D.Kuppusamy (deceased)
- 10.C.G.Bhaskar (deceased)
- 11.S.Varadharajan
- 12.R.Sundarrajan
- 13.K.Manoj
- 14.P.Janardhan
- 15.A.Kandasamy
- 16.S.Thirugnanam
- 17.V.Swaminathan

..Respondents/Accused

Criminal Appeal filed under Section 378 Cr.P.C. against the judgment and order dated 10.10.2011 passed in C.C.No.4604 of 2001 on the file of the XXIII Metropolitan Magistrate Court, Saidapet, Chennai.

For Appellant : Mr.B.Kumarasamy
Amicus Curiae

For Respondents: 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.4604 of 2001 on the file of the XXIII Metropolitan Magistrate Court, Saidapet, Chennai.

2. Major K.Mathews initiated a prosecution in C.C.No.4604 of 2001 before the XXIII Metropolitan Magistrate Court, Saidapet,

Chennai, for the offences under Sections 120-B, 500, 501 and 506 (I) r/w 34 IPC, against seventeen accused/respondents herein. During trial, T.A.Sathiapalan (A2), V.Subramanian (A3), E.Raghavan (A8), D.Kuppusamy (A9) and C.G.Bhaskar (A10) 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 six exhibits. 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. This pamphlet is the subject matter of the prosecution in C.C.No.4602 of 2001, in which, the accused therein were acquitted, challenging which, Major K.Mathews has preferred an appeal in CrI.A.No.132 of 2012.

10. Coming to the case at hand, it is the allegation of Major K.Mathews that the accused had addressed a letter dated 04.04.2001 to M.S.Parthasarathy, Ex-General Secretary of the Welfare Association with a copy marked to him as Ex-President of the Welfare Association, calling upon both of them to hand over

the account books and other records of the Welfare Association.

11. According to Major K.Mathews, the accused were removed from the membership of the Welfare Association and therefore, they have no locus standi to issue the letter dated 04.04.2001 and also, the resolution (Ex-P3) passed by the accused removing him from the post of President and M.S.Parthasarathy from the post of General Secretary, is illegal and defamatory.

12. This Court carefully perused the evidence of Major K.Mathews and the exhibits marked in this case.

13. A perusal of the impugned letter dated 04.04.2001 and the resolution (Ex-P3), it is seen that seventy eight members of the Welfare Association have signed the resolution removing Major K.Mathews and M.S.Parthasarathy from the Executive Committee of the Welfare Association. The members of the Welfare Association were unhappy with the manner, in which, Major K.Mathews and M.S.Parthasarathy were handling the affairs. If Major K.Mathews has any grievance in this regard, the remedy for him is to file a civil suit and not a complaint for defamation.

14. 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."

15. 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

nsd
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) with a direction to return
the original records to the
Madras High Court, trial Court
Chennai - 104.

+1 CC to Mr.S.N.Thangaraj, Advocate sr 4691.
+1 CC to Mr.B.Kumarasamy, Advocate sr 4588

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Crl.A.No.134 of 2012

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

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