

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.01.2020

CORAM:

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

Crl.A.No.135 of 2012

Major K.Mathews

..Appellant/Complainant

Vs.

1. R.Sundarrajan
2. A.Gadhadharan
3. K.Manoj
4. P.Janardhan
5. D.Perumal
6. D.Bashyam
7. 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.4603 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.4603 of 2001 on the file of the XXIII Metropolitan Magistrate Court, Saidapet, Chennai.

2. Major K.Mathews initiated a prosecution in C.C.No.4605 of 2001 before the XXIII Metropolitan Magistrate Court, Saidapet, Chennai, for the offences under Sections 143, 147, 351, 500, 504, and 506 (I) r/w 34 IPC, against seven accused/respondents herein.

3. Before the trial Court, Major K.Mathews examined himself as PW1 and marked three 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. Differences cropped up between Major K.Mathews and the members of the Welfare Association. While so, it is alleged that the accused/respondents herein printed and circulated a defamatory pamphlet 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. It is the further allegation of Major K.Mathews that the accused herein and certain others convened a General Body Meeting of the Welfare Association on 04.03.2001 and passed resolutions against him. According to Major K.Mathews, the said resolutions are defamatory in nature. This resolution is the subject matter of the prosecution in C.C.No.4605 of 2001, in which, the accused therein were acquitted, challenging which, Major K.Mathews has preferred an appeal in CrI.A.No.133 of 2012.

10. Coming to the case at hand, it is his allegation that the accused/respondents herein came to his house on 07.04.2001 around 3.00 p.m., asked him to open the door and hand over the account books and other records of the Welfare Association.

11. A reading of the evidence of Major K.Mathews shows that there was acrimony between him and the accused/respondents. In the cross-examination, when Major K.Mathews was asked whether he would produce the account books and others records, for which, he bluntly refused. This clearly demonstrates his supine

indifference.

12. The evidence of Major K.Mathews is insufficient to convict the accused/respondents of the aforesaid offences.

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) 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 4692.

+1 Cc to Mr.B.Kumarasamy, Advocate sr 4587.

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



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