

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.08.2020

CORAM

THE HONOURABLE MR. JUSTICE T.RAVINDRAN

Cr1.R.C.No.125 of 2015

1.N.R.Rajagopal  
2.Meera Rajagopal

...Petitioners

Vs.

1. State of Tamil Nadu  
Rep.by the Inspector of Police,  
J-6, Thiruvanmiyur Police Station,  
Thiruvanmiyur, Chennai - 600 019.

2. Dr.Kalyani, M.B.B.S.,

...Respondent

Prayer: Criminal Revision has been filed under section 397 r/w 401 Cr1.P.C. to call for the records relating to Cr1.R.C.No.108 of 2012, dated 28.11.2013 on the file of the 4<sup>th</sup> Additional Sessions Judge, Chennai against the order in C.C.No.10525 of 2008, on the file of the XVIII Metropolitan Magistrate Court, Saidapet and set aside the judgment made therein dated 05.10.2012.

For Petitioner : Mr.K.M.Ramesh

For Respondent : Ms.S.Thankira  
No.1 Government Advocate (Criminal Side)

For Respondent : Mr.K.R. Ramesh Kumar  
No.2

O R D E R

Challenge in this criminal revision is made to the judgment dated 28.11.2013 passed in criminal revision case No.108 of 2012 on the file of the 4<sup>th</sup> Additional Sessions Court, Chennai.

2.The 1<sup>st</sup> petitioner preferred the complaint against the second respondent (A2) and the husband of the second respondent viz.,Dr.T.Shanmugam alleging that they have committed the offences punishable under Sections 504, 506(ii) and 341 IPC. Following the investigation conducted by the respondent police,

the charge sheet has been filed against the accused persons for the aforestated offences and the case had been taken on file in C.C.No.10525 of 2008 on the file of the XVIII Metropolitan Magistrate Court, Saidapet, Chennai.

3.To sustain the prosecution case, PWs 1 to 4 were examined and Exs.P1 & P2 were marked. On the side of the accused persons, DW1 was examined and Ex.D1 was marked. No Mo has been marked on either side.

4.On an appreciation of the materials placed on record, the trial Court i.e. XVIII Metropolitan Magistrate Court, Saidapet, Chennai, has held that the accused had not committed the offences punishable under Sections 504 & 506(ii) IPC and acquitted the accused persons of the offences punishable under Sections 504 & 506(ii) IPC, however, proceeded to convict the second respondent (A2) under Section 341 IPC and sentenced her to pay a fine of Rs.100/- in default to undergo simple imprisonment for a period of one week. Challenging the conviction and sentence imposed on her by the trial Court under Section 341 IPC, the second respondent has preferred the criminal revision before the Principal Sessions Court, Chennai and the abovesaid revision was disposed of by the 4<sup>th</sup> Additional Sessions Judge, Chennai, by holding that the second respondent (A2) is not guilty of the offence punishable under Section 341 IPC and resultantly, set aside the conviction and sentence imposed on her by the trial Court and thereby, allowed the criminal revision preferred by the second respondent. Challenging the same, the present criminal revision has been preferred by PWs 1 & 2.

5.The gist of the case levelled against the accused persons is that the flat owners including PWs1 & 2 as well as the accused persons of Swarnamukhi Apartments had decided to remove the beehive on 23.02.2007 in the balcony of the Flat 2A in the second floor and the same was duly intimated to the accused and on 23.02.2007, when the workmen came to remove the beehive, at that time the accused intervened and shouted at all the Flat owners and workmen and resultantly, the Flat owners approached the J6 Police Station and requested for police protection for the removal of beehive and the work was carried out on 26.02.2007, and accordingly, it is put forth in the complaint that the accused persons on the assumption that the defacto-complaint is also responsible for seeking police protection on 26.02.2007 at about 11.30 a.m called the complainant and his wife by names, when they were about to get into their flat, the second accused pointing an accusing finger at the defacto-complainant shouted at high pitch saying "How dare you can call the police. I won't allow you to live peacefully. I will show my

power". The first accused also joined the second accused and threatened the complainant and his wife saying "c';fis bjhiyj;J fl;o tpLnthk;/ c';fs; if. fhy;fis xoj;jhy; jhd; xG';fhf , Ug;gPh;fs;/" and thus it is alleged that the accused had abused and insulted the defacto-complainant and the complainant's wife at the public place by using unparliamentary words and accordingly, the accused persons had committed breach of peace in the premises by threatening and intimidating the complainant and other flat owners and thereby, committed the offences punishable under Sections 341, 504 and 506 IPC.

6.As above pointed out, the accused persons had been acquitted of the offences punishable under Sections 504 & 506 (ii) IPC. As against the said acquittal, the defacto-complainant or the respondent police has not preferred any challenge and therefore, the same had become final. However, as adverted to earlier, the second accused had been convicted and sentenced for the offence under Section 341 IPC by the trial Court. However, the said conviction and sentence has been set aside by way of the impugned order by the 4<sup>th</sup> Additional Sessions Court, Chennai. The abovesaid order is sought to be revised by the petitioners, who are PWs 1 & 2.

7.After scanning the impugned judgment, the only point that has to be considered in this revision is whether the second respondent (A2) has committed the offence punishable under Section 341 IPC, as put forth by the petitioners. As rightly pointed out by the lower Court, nothing has been mentioned in the complaint with reference to the accused persons unlawfully restraining or waylaying the defacto-complainant and his wife in any manner. Therefore, when it has not been clearly made out in the complaint that the defacto-complainant and his wife had been wrongfully restrained by the accused persons and furthermore, when PWs 1 & 2 have also not clearly deposed in their evidence that the accused persons had wrongly waylaid them at the place of occurrence, in such view of the matter, the lower Court is justified in holding that the prosecution has failed to bring home the ingredients of Section 341 IPC and thereby, right in acquitting the second respondent (A2) of the offence punishable under Section 341 IPC.

8.Furthermore, as rightly held by the lower Court, when it is seen that the complaint has also not been lodged by the defacto-complainant immediately after the occurrence and there is a delay of two months in the lodgement of the complaint and when with reference to the same, no proper explanation is forthcoming on the part of the defacto-complainant, in such view of the matter, the abovesaid aspect has also been rightly considered and appreciated by the lower Court in rendering the

finding of acquittal qua the second respondent (A2) of the offence punishable under Section 341 IPC.

9. Considering the materials placed on record, it is found that the relationship between the defacto-complainant and his wife on one part and the accused persons and the other flat owners on the other part has not been cordial from the inception and there had been frequently quarrels amongst them for one reason or the other. The occurrence itself is alleged to have been off-shoot of the earlier occurrence concerning the removable of beehive. Therefore, it is found that all is not well in the relationship between the defacto-complainant and the accused persons and accordingly, it is found that the defacto-complaint/prosecution is unable to substantiate the case put forth against the accused persons with acceptable and reliable materials and resultantly, as above pointed out, the accused persons had been acquitted of the main offences punishable under Sections 504 & 506(ii) IPC.

10. Considering the abovesaid facts in toto, when as determined by the lower court, the ingredients of Section 341 IPC had not been projected in the complaint itself and also not established by the defacto-complainant and his wife during the course of her evidence, when they were examined as PWS 1 & 2 and when no plausible explanation is also forthcoming for the delay in the lodging of the complaint and when as pointed out earlier, the relationship between the parties is not cordial and smooth, in such view of the matter, the lower Court is justified and perfect in holding that the conviction and sentence imposed on the second respondent (A2) under Section 341 IPC as held by the trial Court is unsustainable and resultantly, correct in holding that the second respondent (A2) is not guilty of the offence punishable under Section 341 IPC.

11. In view of the abovesaid factors, I do not find any infirmity or error in the impugned order and the lower Court has properly appreciated the evidence available on record in the proper perspective and rightly acquitted the second respondent (A2) of the offence punishable under Section 341 IPC.

11. In conclusion, the Criminal Revision fails and is accordingly dismissed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To:

1. 1.The Inspector of Police,  
State of Tamil Nadu,  
J-6, Thiruvanmiyur Police Station,  
Thiruvanmiyur, Chennai - 600 019.
2. The 4<sup>th</sup> Additional Sessions Judge,  
Chennai.
3. The XVIII Metropolitan Magistrate Court,  
Saidapet, Chennai
4. The Public Prosecutor,  
High Court, Madras.

+1cc to M/s.K.M.Ramesh, Advocate SR.26069

+1cc to M/s.K.R.Ramesh kumar, Advocate Sr.26068

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NAS (CO)  
RV (08/09/2020)



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