

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2021

C O R A M

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.125 of 2021 &
Crl.M.P.Nos.2434 & 2436 of 2021

B.Murugesh ... Petitioner/Accused
Vs.

State rep.by the
Inspector of Police,
Kotagiri Police Station,
Kotagiri. ... Respondent/Complainant
(Crime No.125 of 2016)

PRAYER: Criminal Revision Case filed under 397 r/w 401 of Cr.P.C. to set aside the Judgment passed in Crl.A.No.5 of 2018, dated 22.01.2021 passed by the learned Sessions Judge, Magalir Neethimandram, (Fast Track Mahila Court), Udhagamandalam at Nilgiris, confirming the order of conviction and sentence passed by the learned Judicial Magistrate, Kotagiri in C.C.No.13 of 2016, dated 05.01.2018.

For Petitioner : Mr.K.Thilageswaran

For Respondent : Mr.A.Madhan
Government Advocate (Crl.Side)

O R D E R

This revision petition is preferred against the judgment passed by learned Sessions Judge [Fast Track Mahila Court], Udhagamandalam at Nilgiris, in Crl.A.No.5 of 2018, on 22.01.2021, confirming the Judgment passed in C.C.No.13 of 2016, dated 05.01.2018, on the file of the learned Judicial Magistrate, Kotagiri.

2. The respondent-Police has registered the case in Crime No.125 of 2016 against the petitioner herein for the offence under Section 353 and 506 (i) of IPC. After investigation laid a charge sheet before the learned Judicial Magistrate, Kotagiri. The learned Magistrate has taken the charge sheet on file in

C.C.No.13 of 2016. After enquiry, the learned Magistrate found the accused guilty of the offence punishable under Section 353 of of IPC and convicted and sentenced him to undergo one year Simple Imprisonment and to pay a fine of Rs.5,000/- in default to undergo three months simple imprisonment and also found not guilty under Section 506 (i) of IPC and acquitted the petitioner for the offence under Section 506 (i) of IPC. Challenging the said conviction and sentence passed by the learned Magistrate, Kotagiri, the petitioner / accused has filed an Appeal before the learned Principal Sessions Judge, Udhagamandalam at Nilgiris. The learned Principal Sessions Judge taken the Appeal on file in Crl.A.No.5 of 2018 and made over to Fast Track Mahila Court, Udhagamandalam at Nilgiris. After hearing the arguments and also considering the grounds raised by the petitioner / accused, dismissed the Appeal, by confirming the conviction and sentence passed by the learned Magistrate, Kotagiri.

3. Challenging the concurrent findings of conviction and sentence passed by the Courts below, the petitioner has filed the present Revision.

4. The learned counsel for the revision petitioner would submit that the occurrence took place on 05.04.2016 and according to the defacto complainant, he said to have given complaint on the same day and the respondent-Police has also issued CSR on 05.04.2016 itself and the defacto complainant has further stated that he gave another complaint on 07.04.2016. Whereas, the Investigating Officer has stated that the defacto complainant has not given any complaint on 05.04.2016 and he has wrongly stated as if the complaint was given on 05.04.2016 and however, the complaint was given only on 07.04.2016. It is contended by the learned counsel that on 05.04.2016, the defacto complainant conducted inspection and smoothly left the place. Since the defacto complainant demanded bribe from the petitioner and when he refused to give it, they foisted a false case on 07.04.2016. There are material contractions with regard to date of the complaint itself and that will go the root of the case of the prosecution. Both the Courts below, have failed to appreciate the evidence of the complainant and the Investigating Officer in this regard and they ignored date of complaint and they failed to the appreciate the fact that the alleged occurrence has taken place only on 05.04.2016. Admittedly, P.W.3 and P.W.4 hostile and except the complainant, none of the witnesses have spoken about the occurrence, therefore, the prosecution miserably failed to prove its case beyond all the reasonable doubt, however, both the Courts below erroneously held that the petitioner has restrained the defacto complainant to perform his official duty and committed the offence punishable under Section 353 of IPC, and therefore, the findings given by both the Courts below are perverse and illegal and

therefore, they are liable to be set aside.

5. Mr.Madhan, learned Government Advocate for the respondent-Police would submit that the eyewitnesses and mahazar witnesses have not supported the case, since they are the employees under the petitioner/accused herein. The learned Judicial Magistrate has also given reason for ignoring the date of complaint. Since on 05.04.2016, the occurrence had happened night hours, they have given CSR, whereas, the Investigation Officer has clearly stated that he has received the complaint only on 07.04.2016. However, when the defacto complainant went for inspection, the petitioner/accused not allowed the defacto complainant to perform his duty as official servant and therefore, he has preferred the complaint. P.W.1 and P.W.2 are the officials and there was no need to foist a false case against the petitioner/accused and they are duty bound to make an inspection as and when necessary and the petitioner/accused is liable to co-operate for completion of the inspection smoothly. Since the petitioner/accused has not cooperated and did not allow the complainant to perform his official duty, the Courts below rightly appreciated the evidence and convicted the appellant. The first appellate Court as a fact finding Court, rightly appreciated and confirmed the findings of the learned Magistrate. The scope of the criminal revision is limited and only if it is shown that the order or the findings of the Courts below are perverse or illegal, the revisional Court can interfere and in this case, there is no illegality or perversity in the orders impugned as the Courts below have passed the same after due appreciation of the materials available on record, hence, no interference is called for from this Court and prayed for dismissal of the revision petition.

6. Heard the learned counsel on either side and perused the materials available on record.

7. Admittedly, the defato complainant is the Government officials, attached with Tea Board of India, Coonor. The petitioner/accused is running a Tea factory in Kotagiri and the officials have gone for inspection on 05.04.2016. According to the prosecution, when P.W.1-defacto complainant along with other officials had gone for inspection on 05.04.2016, the petitioner prevented the defacto complainant and other officials to perform their official duty and therefore, lodged a complaint. After investigation, it was found that the petitioner has committed the offence under Section 353 of IPC.

8. According to the petitioner herein, though the defacto complainant and others officials have conducted inspection on 05.04.2016 and it is alleged that it was prevented by the petitioner herein, admittedly, no such occurrence had taken place and no independent witnesses and no materials evidence

been produced to substantiate the same. Except P.W.1 and P.W.2 the officials, no other independent witnesses have spoken about the occurrence.

9. As rightly pointed out by the learned counsel for the petitioner, the occurrence said to have taken place only on 05.04.2016, as per the prosecution, the complainant gave the complaint only on 07.04.2016. During the evidence, it is stated by the complainant that he has filed complaint on the date of occurrence itself, i.e., on 05.04.2016. Whereas, the Investigating Officer has stated that the complainant has given complaint only on 07.04.2016 and not on 05.04.2016. It is to be noted that the complainant is an Officer and if at all he gave complaint on 05.04.2016 itself, and received CSR, then, what is the necessity to file one more complaint on 07.04.2016, and the said fact was not properly explained by the prosecution, which creates beyond all reasonable doubt. Both the Courts below have not discussed about it and given any specific finding with regard to date of complaint and what is the reason for delay in filing the complaint. Even as per the prosecution, or even as per the complainant, what is the necessity to file one more complaint on 07.04.2016, when the complainant had already filed a complaint on 05.04.2016 itself and got CSR, which creates a reasonable doubt. Since there was unexplained delay in filing the complaint, this Court finds that there is perversity in giving finding regarding conviction and sentence.

10. Accordingly, the Criminal Revision Case is allowed and the Judgment of the learned Sessions Judge, Fast Track Mahila Court, Udhagamandalam at Nilgiris, passed in CrI.A.No.5 of 2018, dated 22.01.2021, confirming the Judgment of the learned Judicial Magistrate, Kotagiri in C.C.No.13 of 2016, dated 05.01.2018, shall stand set aside. The petitioner is acquitted of the charges. Fine amount, if any, paid by the petitioner shall be refunded to him. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

/TRUE COPY/

Sub-Assistant Registrar

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To

1. The Sessions Judge, Magalir Neethimandram,
(Fast Track Mahila Court), Udhagamandalam
at Nilgiris.
2. The Judicial Magistrate,
Kotagiri
3. The Inspector of Police,
Kotagiri Police Station,
Kotagiri.

+1cc to Mr.K.Thilageswaran,Advocate, SR.NO. 13306

Crl.R.C.No.125 of 2021 &
Crl.M.P.Nos.2434 & 2436 of 2021

CA(CO)
KKN 16.04.2021