



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.07.2021

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.A.No.548 of 2019
and
Crl.M.P.No.6646 of 2021

Jayanthakumar
S/o, Sarangapani

...Appellant/Defacto Complainant

Versus

1. State represented by
The Inspector of Police,
Karimangalam Police Station,
Karimangalam.

...Respondent/Complainant

2. Manoharan
S/o Raman

3. Dilipkumar
S/o, Manoharan

4. Dineshkumar
S/o, Manoharan

...Respondents 2 to 4/
Accused 1 to 5

PRAYER:

Criminal Appeal filed under Section 372 of the Code of Criminal Procedure, to allow the appeal, set aside the judgment dated 27.06.2019 passed by the learned Principal Sessions Judge, Dharmapuri in S.C.No.48 of 2017 and convict the respondents 2 to 4/Accused 1 to 3.

For Appellant : Mr.A.Arun Anbumani

For R1 : Mr.S.Sugendran
Government Advocate, (Criminal Side)

For R2 : M/s.P.Chandrasekar

For R3 & R4 : Notice served



JUDGEMENT

Challenge in this Criminal Appeal is made against the the judgment dated 27.06.2019 passed by the learned Principal Sessions Judge, Dharmapuri in S.C.No.48 of 2017.

2. The appellant is the defacto complainant in case in Crime No.64 of 2014 on the file of the first respondent police. The first respondent police registered a case against the respondents No.2 to 4 for the offences under sections 447, 294 (b), 506(ii) and section 3(1) of TNPPDL Act. After investigation, laid a charge sheet before the Judicial Magistrate, Palacode. The learned Magistrate taken the charge sheet on file in P.R.C.No.3 of 2017 and committed the case to the Principal Sessions Judge, Dharmapuri, since the offences are exclusively triable by the Court of Sessions. The learned Principal Sessions Judge taken the case on file and after completing the formalities framed the charges against the respondents 2 to 4/accused for the offences under section 447, 294(b) 506(ii) IPC and also section 3(1) of TNPPDL Act.

3. After framing charge, in order to prove the case of the prosecution on the side of the prosecution, as many as 7 witnesses were examined as P.Ws.1 to 7 and seven documents were marked as Exs.P1 to P7. Besides that one material object M.O.1 was also marked.

4. After completing the examination of the prosecution witnesses, an incriminating circumstances culled out from the evidence of the prosecution witnesses put before the accused by questioning under section 313 Crpc. They denying the same as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was produced.

5. After hearing of the arguments advanced on either side, considered the materials, the trial court acquitted the respondents 2 to 4. Challenging the said judgment of acquittal, the defacto complainant has filed the present appeal before this Court.

6. The learned counsel for the appellant submitted that the appellant purchased the property from the respondents 2 to 4 by a sale deed dated 11.11.2005, for a valid consideration of Rs.4,50,000/- and all the patta, all the electricity charges and other revenue records were transferred in the name of the appellant and taken the possession and enjoying the property by letting out the shops to the tenants. When the tenants were in



possession, the respondents threatened the tenants to vacate the shops and also threatened the appellant to hand over the property to the private respondents. Since they could not succeed it and in the absence of the appellant ie., when the appellant was not in native and when he was in out of station at that time ie., on 11.03.2014 at about 10 'o clock, the private respondents using the JCB shown in M.O.1 dismantled the shops which was purchased by the appellant from the private respondents. The brother of the appellant informed the same to the appellant and after came to the native, the appellant filed the complaint before the first respondent police on 14.03.2014 in Crime No.64/2014 for the offences under section 294(b), 341, 447, 506(ii) and also under section 3(1) of TNPPDL Act. The appellant was examined as P.W.1, he has clearly narrated the averments made in the complaint and he has examined the other witnesses and proved his case beyond reasonable doubt. However, during cross examination, the defence counsel raised the plea of defence that no original document was produced and there is no tenant particulars were given, since he has not purchased the property.

7. Further the learned counsel for the appellant would submit that the learned trial judge failed to appreciate the evidence of P.W.1 and simply dismissed the petition on the ground that he has not produced any documents. Even in the complaint Ex.P1, he annexed the copy of the sale deed and also the tax receipt and the electricity consumption receipt, patta and chitta and also he filed the mortgage document to show that the abovesaid originals were deposited before the Union Bank of India, Thiruvannamalai, along with the photostat copy of the documents. However the Investigating Officer unfortunately has not marked those documents in the court. If at all, they asked the original documents at the time of trial or they would have taken the summon from the court to produce those documents. Without taking any steps they completed the trial. Therefore the trial court failed to appreciate that even in the complaint itself these documents were produced before it. The court also would have exercise his power to call for the documents either from the bank or opportunity would have given to the appellant to get those documents and it should have compared with originals. Without doing the same, just come to the conclusion. He failed to observe the other existence of the shops and subsequent damages and therefore the appellant constrained to file the petition in CrI.M.P.No.6646 of 2019. under section 391 r/w 482 Crpc. The opportunity must be given to the appellant. The non production of these documents during the trial is beyond the control of the appellant. Neither the I.O nor the Prosecutor guided the appellant to produce the documents. Even otherwise in the interest of justice, the court ought to have



summoned the documents and found out the truth. Neither the first respondent guided the appellant to bring the documents nor the appellate court to exercise its jurisdiction. The trial court is erroneously passed the judgment that the ownership, existence of building and the demolition is also not proved. Therefore the petition under section 491Crpc in Crl. M.P.No.6646 of 2019 would be allowed and the order passed by the trial court is liable to be set aside.

8. The learned counsel for the private respondents 2 to 4 would submit that the prosecution has not proved the case that the appellant is the owner of the property and the appellant was in the possession of the property at the relevant point of time and the private respondents only damaged the property. Since they have not proved the case beyond reasonable doubt and no document was produced, the trial court rightly dismissed the case of the prosecution and acquitted the respondents 2 to 4. Hence there is no merit in the appeal. Further he submitted that there was a delay in filing the complaint.

9. Further, the learned counsel for the private respondents 2 to 4 would submit since at the time of trial, the documents were very much available with the appellant, the appellant has not taken any opportunity during the trial to file the document, now they cannot invoke section 391 Crpc to fill up the lacunae. It is the case of the appellant that at the time of trial, he is not aware of the whereabouts of the original documents and it is for the appellant to mark those documents when he was examined as P.W.1 and since he is not in possession that he is not the owner, he did not file the documents. Now only to fill up the lacunae, he is invoking section 391 Crpc, it cannot be entertained. The trial court rightly observed and dismissed the prosecution case and find there is no merit in the appeal and hence the appeal is liable to be dismissed.

10. The learned Government Advocate would submit that whatever the documents the appellant produced, they produced the same. However at the time of trial though the appellant has not produced the documents, during the cross examination itself the private respondents accepted the ownership. The trial court failed to consider the same and only rejected the prosecution case only on technical ground because of not marking the documents. They are ready to follow the directions of this Court.

11. Heard the learned counsel on either side and perused the records.



12. The case of the prosecution is that the appellant purchased the property from the respondents 2 to 4 by a sale deed dated 11.11.2005, for a valid consideration of Rs.4,50,000/- and taken the possession and enjoying the property by letting out the shops to the tenants. When the tenants were in possession, the respondents had intention to get back the shops, threatened the tenants to vacate the shops and also threatened the appellant to hand over the property. Since they could not succeed it and in the absence of the appellant, they dismantled the shops. Hence, he filed the complaint before the first respondent police

13. This Court is the appellate court, final court of fact finding appreciated the entire evidence in accordance with law.

The trial court framed the charges against the private respondents for the offences under section 447, 294(b), 506(ii) and 3(1) of TNPPDL Act.

14. In order to substantiate the case, on the side of the prosecution totally 7 witnesses were examined and seven documents were marked. One material object was also marked. In order to substantiate the charges, the appellant himself was examined as P.W.1 and he has clearly deposed that he purchased the property from the private respondents vide sale deed dated 11.11.2005 and also all the property tax transferred in the name of the appellant and also the E.B service connection and other patta, chitta also transferred and stands in the name of the appellant, and subsequently he has also deposed that he purchased the property for a sum of Rs.4,50,000/- . He also stated that he purchased the shops and he let-out the building to the tenants since the private respondents disturbed the tenants, they vacated them and in the absence of the appellant they demolished. Therefore he preferred the complaint after returned from the native.

15. The learned counsel for the private respondents submit that there was a delay in filing the complaint. But the appellant himself stated that since he was not in station at the time of occurrence and only he was informed by his brother and also he taken the photographs through his cell phone about the demolition, he come to know about the occurrence. During the cross examination the defence counsel only put a suggestion before him that the original documents were not produced, so that the appellant was not the owner of the property. The trial court also made observation that the prosecution has not proved the ownership, existence of the shop and dismantling of the shops. Therefore the documents produced in CrI.M.P.6646 of 2021



ie copy of the sale deed, property tax receipts, patta and chitta adanganl, copy of the memorandum of deposit on title deeds and photographs are necessarily to be bring before the trial court. If the trial judge actively participated in the trial he would have very much asked either the I.O to collect and mark the copy of the documents or otherwise the court itself summoned the documents from the bank and mark the copy of the documents. Therefore neither the I.O nor the prosecutor acted diligently and the trial court also not actively participated in the trial and subsequently found fault that the prosecution has not proved the case, whereas the defacto complainant / appellant is an innocent and he has very much brought all the grievances by way of complaint to the first respondent police, but unfortunately neither the I.O nor the Judge have acted diligently. Therefore the appellant is suffered very much with the impugned judgment. Therefore in the interest of justice and to meet the ends of justice this Court is inclined to setaside the judgment of the trial court. Accordingly the judgment dated 27.06.2019 passed by the learned Principal Sessions Judge, Dharmapuri in S.C.No.48 of 2017 is setaside and the case is remitted back to the trial court. Crl.M.P.No.6646 of 2021 is allowed.

16. The petitioner in Crl.M.P.No.6646 of 2021 is directed to produce all the documents before the trial court and the trial court is directed to mark the copies of the documents after comparing with the originals and the same shall be returned to the appellant and opportunity should be given to the defence counsel for cross examination. After completing these proceedings in day today basis, directed to complete the trial within three months and dispose of the case in S.C.No.48 of 2017.

17. With the above directions, the Criminal Appeal is disposed of.

-s/d-

Assistant Registrar(CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Principal Sessions Judge,
Dharmapuri.



2. The Inspector of Police,
Karimangalam Police Station,
Karimangalam.

3. The Public Prosecutor,
High Court,
Madras.

4. The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.P.Chandrasekar, Advocate, Sr.36141

CRL.A.No.548 of 2019

RLD[co]
NSK 27/08/2021