



Crl.O.P.No.1432 of 2022
in Crl.A.SR.No.46526 of 2021

R.PONGIAPPAN, J.

This petition has been filed to grant leave for filing an appeal against the order of acquittal dated 24.11.2021 passed in S.T.C.No.129 of 2019 on the file of the learned Judicial Magistrate, Katpadi, Vellore.

2. Heard the learned counsel for the petitioner.

3. The case of the prosecution before the trial Court is that, for the alleged occurrence dated 23.06.2007, a case has been registered in Crime No.358 of 2007 for the offences punishable under Sections 147, 294(b), 323 and 506(ii) of IPC. After elaborate investigation, the respondent police filed a Final Report stating that, the complaint given by the *de facto* complainant, is having some mistake of fact. Later, the learned Judicial Magistrate, issued a R.C.S. notice in R.C.S.No.15 of 2007 to the *de facto* complainant stating that the respondent police filed a Final Report as the allegation levelled against the accused by him is having some mistake of fact. Subsequently, after receipt of R.C.S. notice, the *de facto* complainant



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filed a private complaint and on which, the learned Magistrate assigned with case number as S.T.C.No.129 of 2019 and took cognizance for the offences punishable under Sections 341, 294(b) and 323 of IPC.

4. After elaborate trial, the learned Magistrate came to the conclusion that the evidence given by P.W.1 and P.W.2, is having lot of contradictions. Further, the said evidence do not attract ingredients, which are necessary for proving the offences punishable under Sections 341, 294(b) and 323 of IPC. After completing the procedure laid in Chapter 20 of the Code of Civil Procedure, came to the conclusion that the *de facto* complainant has not proved the charge and ultimately, acquitted the accused.

5. Challenging the same, the *de facto* complainant, is before this Court, praying to grant leave for filing an appeal against the order of acquittal.



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6. The learned counsel appearing for the petitioner after pointing out paragraph nos.24 and 25 of the judgment made submission that, in respect of the assault committed by the accused, P.W.1 and P.W.2 deposed before the trial Court as, during the relevant point of time, the respondents / accused assaulted P.W.1 and caused injury. He would further submit that, the Doctor, who treated P.W.1 also gave evidence as P.W.3 that, during the relevant point of time, the accused sustained simple injury. It is his specific submission that even after knowing the fact that the evidence given by P.W.1 is corroborated through the evidence given by the Medical Officer, acquitted the accused, which is nothing but perverse and cross injustice.

7. Now, on considering the said submissions with the relevant records, it is true that the impugned judgment dated 24.11.2021, in paragraph nos.24 and 25, the learned Magistrate has stated about the evidence given by P.W.1 in respect of the assault made by the accused. However, on going through the entire judgment rendered by the trial Court, it was observed that in respect of the weapon used by the accused and the



place of occurrence, there was a contradiction found in the evidence given by P.W.1. Further, it was observed that the place of injury sustained by the injured, is not in accordance with the evidence given by him, particularly in the area, in which, he sustained injury. Furthermore, it was observed that previous to the occurrence, both the injured and the accused are having some enmity and also the police officers laid a Final Report as the allegation levelled against the accused by the *de facto* complainant is having some mistake of fact.

8. Therefore, only after observing as above, the trial Court acquitted the accused and thereby, I do not see any perversity and cross injustice in the judgment rendered by the trial Court. Accordingly, it is not a fit case for granting leave. Hence, this petition is dismissed.

02.03.2022

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