



Crl.RC.No.707 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.RC.No.707 of 2017

Krishnamurthy

Petitioner/Accused

Vs

State Rep by
The Deputy Superintendent of Police,
Sirkali,
Nagapattinam District.
(Poraiyar Police Station)
Crime No.45 of 2004)

Respondent

Prayer:- These Criminal Revision Case has been filed, under Sections 397 r/w 401 of Cr.PC, against the Judgement dated 21.01.2011 made in Crl.A.No.53 of 2006 passed by the Court of Session Judge, Nagapattinam confirming and modifying the Judgement dated 17.04.2006 made in S.C.No.220 of 2005 passed by the Additional Assistant Sessions Judge, Mayiladuthurai.

For Petitioner

:Mr.G.Pugazhenth

For Respondent

:Mr.S.Sugendran
Addl. Public Prosecutor



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ORDER

This Criminal Revision has preferred by the first accused in S.C.No.220 of 2005 on the file of the Additional Assistant Sessions Judge, Mayiladuthurai against the Judgement made in Crl.A.No.53 of 2006 on the file of the learned Sessions Judge, Nagapattinam confirming the conviction and sentence imposed on him in SC.No.220 of 2005. The petitioner along with 4 others were convicted by the trial Court for the offence under Section 147, 148 and 324 of IPC. They were tried for the offence under Sections 3 (2) (V) of SC/ST (Prevention of Atrocities) Act. All the accused preferred an appeal before the learned Sessions Judge, Nagapattinam and the conviction was confirmed with modification in sentence alone for the offence under Section 324 of IPC.

2.Prosecution case is that PW-1/Complainant had lent a sum of Rs.2,500/- to first accused. PW-1 demanded return on 21.01.2004 at about 6.00.p.m. A1 refused and an argument ensued. Villagers intervened and separated them. P.W-4 received a phone call calling for P.W.1 and on being informed, PW-1 proceeded to return the call. On



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his stepping out of PW-4's house, after doing so, he was attacked by the

five accused, they using Aruvals and knives. PW-11, brother of PW-1

proceeded to the scene on hearing the commotion. Both PWs-1 and 11

were abused by their caste name and threatened of being put to death.

PW-1 was stabbed in the stomach by A4, while PW-11 was so stabbed

by A5. A3 also caused cut injury to PW-11. On the complaint of PW-1,

a case was registered. Upon completion of investigation and filing of

final report informing commission of offences u/s.147, 148, 341,

294(b), 324, 307 IPC and 3(2)(v) of SC/ST (Prevention of Atrocities)

Act, the case was taken on file in P.R.C.No.35 of 2004 on the file of

learned Judicial Magistrate-II, Mayiladuthurai. Upon committal, the

case was tried in S.C.No.220 of 2005 on the file of Additional Assistant

Sessions Judge, Mayiladuthurai.

3. Before trial Court, prosecution examined 14 witnesses and marked 15 exhibits and two Material Objects. None were examined on the side of the defence nor were any exhibits marked. On questioning u/s.313 Cr.P.C., the accused denied charges. On appreciation of materials before it, trial Court under Judgement dated 17.04.2006,



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convicted petitioners for offences u/s.147, 148 and 324 IPC and sentenced them to undergo one week R.I. for offence u/s 147 IPC, 2 weeks R.I for offence u/s.148 IPC and 2 years R.I., and fine of Rs.2,000/- each i/d 3 months R.I. for offence u/s. 324 IPC. Petitioners were acquitted of offences under Sections 341, 294(b), 307 IPC and Section 3(2)(v) of SC/ST (Prevention of Atrocities) Act. All five accused move C.A.No.53 of 2006 on the file of learned Sessions Judge, Nagapattinam, which Court, under Judgement dated 21.01.2011, acquitted A1, 4 & 5 of charge u/s. 147 IPC, convicted A2 and 3 for such offence, convicted A1, 4 & 5 for offences u/s. 148 and 324 but reduced the sentence for offence u/s. 324 to 6 months R.I. Sentences of fine were confirmed and substantial sentences were ordered to run concurrently.

4. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent.

5. The learned counsel for the petitioner would submit that the fourth and fifth accused in this case had preferred revision before this Court in Crl.R.C.No.699 of 2011. This Court by an order dated



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28.08.2017 acquitted them of all the charges and allowed the revision.

He would further submit that the finding of this Court with regard to the petitioners in Crl.R.C.No.699 of 2011 would be applicable to the petitioner in this case. The learned Additional Public Prosecutor fairly concedes that position.

6. We find that while disposing the revision filed by the fourth and fifth accused, this Court was pleased to observe as follows:

11. We are unable to subscribe to the reasoning of the Appellate Court. Once a charge is framed for offence under the SC/ST (Prevention of Atrocities) Act, the case is to be tried by a Special Court constituted in keeping Section 14 of the Act. Whether prosecution succeeds or not in proving such a charge is a matter for trial. The fact that such charge has not been proved at the trial would not validate a trial of the case by a Court not empowered to do so. Once the mandate of the law is violated the entire trial is vitiated. Even on facts this Court finds that both P.W.1 and P.W.2



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have admitted to a group clash and the evidence of PW-4 falsifies the version of PW-1 and PW-11, injured persons, on the manner they arrived at the scene. The genesis of the occurrence is unclear. This is more particularly so, since PW-1 has admitted to not informing police that A5 caused him stab injury and further that the quarrel between both groups was on for about half an hour. The occurrence allegedly took place on 21.01.2004 at about 7.30.p.m. FIR was registered on the next day i.e., 22.01.2004 at about 12.00.noon and the same was forwarded to Court only on 23.01.2004 at about 1.00.p.m. In the circumstances of the case, possibility of the FIR being a product of deliberation cannot be ruled out.

7. In fact when the said revision was taken up by this Court, the petitioner had not preferred any revision. It was only thereafter this revision came to be filed with a delay.



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8. We are of the view that the benefit of the finding of this Court

referred above has to extended to the petitioner as well. This Court had observed that the trial was vitiated, since an offence under SC/ST Act was tried by the Assistant Sessions Judge who was not competent to try the said offence. This Court also found out that the evidence of the witnesses cannot be believed and it is unsafe to convict the accused.

9. For the foregoing reasons, this Criminal Revision is allowed and the learned Sessions Judge, Nagapattinam passed in C.A.No.53 of 2006 confirming the judgement of the learned Additional Assistant Sessions Judge, Mayiladuthurai, passed in S.C.No.220 of 2005 shall stand set aside. The petitioner is acquitted of all charges.

10. Fine if any paid shall be refunded. The bail bond if any executed by the petitioner accused shall stand cancelled.

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Index: Yes/No

Web: Yes/No

Speaking/Non Speaking



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vsn

WEB COPY To:

- 1.The Session Judge, Nagapattinam
- 2.The Additional Assistant Sessions Judge, Mayiladuthurai.
3. The Deputy Superintendent of Police, Sirkali,
Nagapattinam District.
(Poraiyar Police Station)
- 4.The Public Prosecutor, High Court, Madras



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SUNDER MOHAN, J.

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