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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.05.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Orders Reserved On 27.04.2022	Orders Pronounced On 27.05.2022
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Cr1.R.C.No.955 of 2017

S.Murugesan

... Petitioner/Accused NO.1

Vs.

The Inspector of Police,
Dharapuram Police Station,
Dharapuram.
Tiruppur District.

... Respondent/Complainant

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to declare the acquittal order dated 19.07.2016 made in S.C.No.41 of 2014 on the file of the Assistant Sessions Court, Dharapuram as Honourable Acquittal.

For Petitioner : Mr.R.Prabakar

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

The petitioner/A1 in S.C.No.41 of 2014 who was acquitted by the learned Assistant Sessions Judge, Dharapuram by judgment dated 19.07.2016 filed this revision petition seeking to declare the acquittal passed in the judgment as Honourable Acquittal.

2.The gist of the case is that on 17.12.2010 at about 4.00 p.m. near Dharapuum Five road junction, flex board was placed by Kongunadu Munnetra kazhagam for an agriculture meeting stated to be held in Karur. The flex board was placed near Surya Bakery in Five road junction, Dharapuram and the flex board was valued Rs.1,800/-. This flex board was damaged by the petitioner and other accused due to prior enmity and political difference. Likewise on the same day at about 4.30 p.m, another flex board



which was placed near the entrance of Dharapuram new bus stand was also damaged. Hence, a case was registered in Crime No.5820 of 2010 on 17.12.2010 on the complaint of P.W.1, the Organizing Secretary of Kongunadu Munnetra Kazhagam, Dharapuram. On completion of investigation, charge sheet filed which was taken on file in S.C.No.41 of 2014 by the Assistant Sessions Judge, Dharapuram. During the trial, P.W.1 to P.W.8 examined, Ex.P1 to Ex.P8, M.O.1 and M.O.2 marked. On the side of the defence, D.W.1 to D.W.3 examined and Ex.D1 to Ex.D11 marked. On conclusion of the trial, the Trial Court acquitted the petitioner and the other accused. Now the petitioner seeks to declare the acquittal as honorary acquittal. Hence, the above petition is filed.

3.The contention of the learned counsel for the petitioner is that the Trial Court failed to consider that Section 4 of the TNPPDL Act, 1992 is attracted in this case even on a demurrer admitting the case of the prosecution. In this case no fire or explosive substance has been used which shows the malafidness on the part of the respondent police to falsely implicate the petitioner. Further in this case, the defacto complainant without license or permission erected the flex board and banner in the public places, namely, near the bus stand and five junction road. It is the bounden duty of the police to remove the unauthorized erection of flex board, on the other hand had falsely implicated the petitioner in this case. Admittedly, in the complaint/Ex.P1, P.W.1 admits that there is two rival factions in the party and the faction of Thaniyarasu could be the reason behind the damage to the flex board. In the FIR/Ex.P2, it is recorded that unknown persons committed the offence and under what circumstances, the petitioner and another were arrayed as accused is not known. He further submitted that the petitioner had been made as a scapegoat and made to face the trial on a false case. Hence, the defacto complainant is liable for punishment upto three years as per Section 285-B IPC with fine of Rs.10,000/- as per the orders of this Court in CrI.A. (MD).No.273 of 2008 in the case of Logu @ Loganathan vs. Inspector of Police, Thanjavur reported in CDJ 2018 MHC 7126 held that ordinary mischief caused by any individual in a fight, they cannot be brought under Section 3(1) of TNPPDL Act and it has become a routine practice of the Police to implicate even the individuals who allegedly caused damage of property worth about Rs.100/- or more, such practice should be stopped herewith.

4.The learned counsel further submitted that in this case FIR was registered for occurrence which had taken place at two places, one at the Five road junction and another near the bus stand. For these two incidents, material object in respect of five road junction alone was produced after eight months on



08.07.2011 and no property was produced for the incident that took place near the bus stand. The Trial Court though refers to the same in paragraph 29 of the judgment, thereafter left it as it is. Further, the Trial Court in paragraph 21 of the judgment had given a finding that the respondent police committed several irregularities. Thus, the petitioner submitted that in this case P.W.1 is the complainant who lodged a complaint/Ex.P1 and P.W.3 states about the damage caused to the flex board. Palanisamy/Head Constable, who registered the FIR as well as Elamurugan/Investigating Officer, were not examined as witnesses. In this case except P.W.1, the other witnesses P.W.2 to P.W.5 who were projected as witnesses to the occurrence have not supported the case of the prosecution. Likewise, P.W.6 and P.W.7 who are the witnesses to the observation mahazar and rough sketch not supported the case of the prosecution. Except for the evidence of P.W.1/defacto complainant and P.W.8/Investigating Officer, no other witnesses supported the case of the prosecution. These two witnesses have also not stated about the involvement of the petitioner and thus, even remotely the petitioner and the other accused could not be connected to the case.

5.He further submitted that the petitioner had a dispute with Elamurugan/Inspector of Police which he had proved by examining himself as D.W.1 and marked several documents. The petitioner also examined D.W.2 and D.W.3 to confirm the improper and illegal arrest. In the arrest memo and the arrest intimation, contradictory places shown as place of arrest. Likewise, intimation was served to the relatives of the petitioner and the other accused by a single intimation memo which is not proper. Though these flaws have been recorded in the judgment, no stricture or censure passed, the Trial Court acquitted the petitioner for the reason that the prosecution not proved the case. He further submitted that the petitioner is an activist who was agitating for the rights of the farmers, earlier, there was burst of crackers near his place, he lodged a complaint and no action was taken by the Inspector of Police, against whom he sent a representation to superior Police Officers. Hence, the Inspector of Police/Elamurugan had grudge and motive to falsely implicate the petitioner in the above case. The petitioner already filed a petition in CrI.M.P.No.16 of 2017 under Section 340 r/w. 195 Cr.P.C for perjury, which is pending before the learned Principal Sessions Judge, Tiruppur. Likewise, the petitioner for his illegal detention of 20 days in the above case and for taking appropriate action, filed a writ petition in W.P.No.14464 of 2017 seeking compensation which is also pending before this Court. In view of the same, it is imperative that the petitioner's acquittal to be recorded as honorary acquittal.



6. The learned Additional Public Prosecutor submitted that the expression 'Honourable Acquittal' is unknown to the Code of Criminal Procedure or Indian Penal Code. He further elaborated the same by filing a counter stating that the petitioner and one Nandakumar damaged the flex board worth Rs.5,000/- which was placed near the Bakery and Dharapuram new bus stand. On the complaint of P.W.1 case was registered, during investigation the petitioner's role was confirmed. The respondent police visited the scene of occurrence, prepared observation mahazar and rough sketch, examined the witnesses present in the scene of occurrence and thereafter the petitioner and the other accused were arrested. On completion of investigation, charge sheet filed, the same was taken on file in P.R.C.No.32 of 2013 by the learned Judicial Magistrate, Dharapuram on 15.02.2011. Thereafter, the case was transferred to the learned Assistant Sessions Judge, Dharapuram in S.C.No.41 of 2014. Before the Trial Court, P.W.1 to P.W.8 examined, Ex.P1 to Ex.P8, M.O.1 and M.O.2 marked. On the side of the defence, D.W.1 to D.W.3 examined and Ex.D1 to Ex.D11 marked. The Trial Court on examination of the witnesses and the materials produced, acquitted the petitioner and the other accused. He further submitted that the points raised now were raised earlier before the Trial Court and the Trial Court, in its well reasoned judgment, answered the same by observing that though there is some contradiction in the arrest memo and arrest intimation and for preparation of single arrest intimation for the arrest of two accused is not proper, but the same would not make the arrest illegal and it would not vitiate the trial. Further when the petitioner and the other accused was produced before the learned Magistrate for remand, no complaint was made and the remand is proper.

7. He further submitted that D.W.1 though projected that on the day of his arrest, he was attending a funeral and the time and place of arrest was wrongly shown, D.W.2/his son had given a different version in conformity to the case of the prosecution. Likewise, D.W.3 also confirmed about the arrest of the petitioner. He further submitted that in this case it is an intra-party rivalry between same political organization and at that time, a complaint was lodged. Thereafter, it appears that the issue had been resolved between the groups and that is the reason all the witnesses not supported the case of the prosecution but it is not in dispute that P.W.1/complainant lodged a complaint/Ex.P1 and he supported the case of the prosecution. Only due to the witnesses turned hostile, the petitioner and the other accused were acquitted. Hence, the Trial Court rightly observed in the judgment that the prosecution failed to prove the case and acquitted the accused. It is not a case of false implication and hence, the prayer sought for by the petitioner seeking 'Honourable Acquittal' is not proper.



8. In support of his contention, the learned Additional Public Prosecutor relied upon the decision of the Apex Court in the case of Union of India and others vs. Methu Meda reported in [2022] 1 SCC 1, wherein it was clearly held that the law is well settled that if a person is acquitted giving him benefit of doubt from the charge of an offence involving moral turpitude or because the witnesses turned hostile, it would not automatically entitle him for employment [Honourable acquittal]. He also relied upon the decisions in the case of C.Surendhar vs. The Director General of Police reported in 2019 [2] LW(Crl) 801 and in the case of M.Krishnan vs. The State reported in 2014 (3) MWN (Cr.) 203(DB).

9. Considering the submissions made and on perusal of the materials placed before this Court, it is seen that Crl.M.P.No.16 of 2017 filed under Section 340 r/w. 195 Cr.P.C before the learned Assistant Sessions Judge, Dharapuram was dismissed on 14.03.2017. While dismissing the same, the Lower Court observed that no charges were established against Mr.Elamurugan/Inspector of Police and Mr.Palanisamy, the then SSI of Police. The Departmental action sought for was also rejected by the Lower Court. The petitioner sent representation on 15.02.2017 seeking departmental action against Elamurugan and Palanisamy, the then Inspector of Police and SSI, departmental enquiry conducted and thereafter the same was closed with intimation to the petitioner. On perusal of the records, it is seen that the complaint lodged by P.W.1 against the other rival group in the party, FIR registered against unknown persons and thereafter, during investigation finding the role of the petitioner and the other accused, both of them were arrested. As rightly contended by the Trial Court, the petitioner and the other accused were produced for remand, at that time no complaint was made and the remand is not illegal. P.W.1/complainant had not denied the lodging of the complaint. On registration of the case, for cognizable offence investigation was properly conducted, charge sheet filed, witnesses may turn hostile not supported the case of the prosecution, it might be for various reasons in this case, the witnesses are all from the same political party, it is an intra-party rivalry and later the issue could have got resolved or for various consideration they would have resiled from their previous statement. The witnesses turned hostile and thereafter getting benefit out of the same, and getting acquittal would no way can be termed as a Honourable Acquittal. This Court as well as the Apex Court have held that the expression 'Honourable Acquittal' is unknown in the criminal law, it is in the service laws the same is employed and that to, it is clearly held that it is the Screening Committee or the Disciplinary Authority to decide upon each facts of the case to consider whether it is



merely an acquittal or otherwise. The Apex Court in the judgment of Methu Meda [cited supra] held that in case the prosecution failed to take steps to examine the crucial witnesses or the witnesses turned hostile, such acquittal would fall within the purview of giving benefit of doubt and the accused cannot be treated as honorarily acquitted by the Trial Court. In this case, admittedly majority of the witnesses have turned hostile. Hence, the petitioner seeking to declare the acquittal order dated 19.07.2016 made in S.C.No.41 of 2014 on the file of the learned Assistant Sessions Judge, Dharapuram as Honourable Acquittal is not sustainable.

10. Accordingly, the criminal revision petition stands dismissed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police,
Dharapuram Police Station,
Dharapuram.
Tiruppur District.

2.The Assistant Sessions Judge,
Dharampuram.

3.The Public Prosecutor, High Court, Madras.

+1 cc to Mr.R.Prabakar, Advocate Sr.NO. 31923

Cr1.R.C.No.955 of 2017

mg (CO)
A.SK(06/06/2022)