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CrI.R.C.No.1004 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2023

CORAM:

The Honourable MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CrI.R.C.No.1004 of 2018

and

CrI.M.P.No.11774 of 2018

Seenuvasan

...Petitioner/Appellant/
De facto Complainant

-Vs-

1.Thandavarayan
2.Ragothu
3.Suresh
4.Ezhumalai

...Respondents/Respondents/
Accused Nos.1 to 4

Prayer:- Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C, to call for records made in the impugned order dated 06.07.2018 issued by the learned Additional Sessions Judge (Fast Track Court), Villupuram, dated 06.07.2018 made in C.A.No.41 of 2016 and punish the Respondents according to law and allow the present Criminal Revision Case.

For Petitioner : Mr.B.Gopala Krishnan

For Respondents : Mr.P.Rajesh



ORDER

WEB COPY When the case came up for hearing on 21.09.2023, there was no representation on behalf of the Revision Petitioner. Therefore, the case was adjourned to 05.10.2023.

2. On 05.10.2023, there was no representation for the Revision Petitioner. The learned Counsel representing the Counsel for the Respondents submitted that the Senior Counsel on record for the Respondents is unable to appear before this Court as his father had expired. That was also recorded on 05.10.2023. Therefore, this Court directed the Registry to list the case under the caption “For Dismissal” on 12.10.2023.

3. Today, 12.10.2023, when the case came up for hearing, the learned Counsel for the Revision Petitioner expressed his apologies and proceeded with the argument.

4. It is the contention of the learned Counsel for the Revision Petitioner that he was the de facto Complainant and P.W.1 before the Trial Court, learned Judicial Magistrate, Tirukoilur. As per his submission, the



1st Respondent in this Criminal Revision Case is his brother. There had been a civil dispute between brothers regarding the agricultural lands. The dispute was pending before the Civil Court. After due trial, the Civil Court granted a decree in favour of the Revision Petitioner. Subsequent to that decree, the Revision Petitioner had purchased a motor pump set and fixed it in the common well, wherein the 1st Respondent also has a share. Subsequently, he came to know that his motor pump set was stolen. He received information from P.W.3 that, on instigation by his brother, the 1st Respondent in this Criminal Revision Case, the sons of 1st Respondent, Respondents 2 to 4, had removed the motor pump set purchased by the Revision Petitioner, which was fixed on the common well.

5. As per his evidence before the Trial Court, the Revision Petitioner himself had deposed as witness as P.W.1. As per his evidence, he had information from P.W.3 that the sons of 1st Respondent, Respondents 2 to 4, along with some other people, had placed the motor pump set in the workshop belonging to P.W.3. P.W.3 is alleged to have shared the information with the de facto Complainant/P.W.1. P.W.1 had given a complaint to the Kandachipuram Police Station. Based on the complaint, the then Sub-Inspector of Police, Kandachipuram Police Station, had not



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registered FIR. Instead, he had registered CSR (Community Service Register). Since the earlier Investigation Officer had not proceeded with the investigation, the de facto Complainant filed Crl.O.P.No.14700 of 2009 before this Court and obtained direction against the then Sub-Inspector of Police, by which the investigation was transferred from the then Sub-Inspector of Police to another Sub-Inspector of Police. The subsequent Sub-Inspector of Police took up the investigation, registered a case and recovered the motor pump set from the workshop of P.W.3. On completion of the investigation, he laid the final report against the first respondent herein as A1 for the offences under Section 379 r/w 34 of IPC and against the first respondent's sons as A2 to A4 for the offences under Section 379 of IPC. The case was taken on file by the learned Judicial Magistrate, Tirukoilur, in C.C.No.69 of 2010.

6. On summons, the first respondent and his sons A1 to A4 had entered appearance. They were furnished with copies under Section 207 of Cr.P.C.

7. After hearing the prosecution and the learned Counsel for the Defence, the learned Trial Judge had framed charges against A1 for the



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offences under Section 379 r/w 34 of IPC and against A2 to A4 for the
offences under Section 379 of IPC.

8. A1 to A4 denied the charges. Therefore, the learned Trial Judge had ordered trial.

9. During trial, the prosecution examined witnesses P.W.1 to P.W.13 and marked documents Exs.P1 to P7.

10. During trial, except P.W.3 and P.W.5, the others remained hostile.

11. On appreciation of evidence, the learned Trial Judge, by judgment dated 11.12.2015 in C.C.No.69 of 2010, acquitted A1 to A4 from the charges.

12. Aggrieved by the same, the Revision Petitioner herein as the de facto Complainant had preferred the Appeal before the learned Sessions Judge, Villupuram, which was subsequently transferred to the file of the learned Additional Sessions Judge (FTC), Villupuram, as Crl.A.No.41 of



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13. After hearing the learned Counsel for the Appellant/de facto Complainant and the prosecution, the learned Appellate Judge by judgment dated 06.07.2018 in Crl.A.No.41 of 2016 confirmed the judgment of the learned Trial Judge in C.C.No.69 of 2010 dated 11.12.2015.

14. Therefore, the de facto Complainant/Appellant in Crl.A.No.41 of 2016 had approached this Court by filing this Criminal Revision Case to set aside the judgment of acquittal recorded by the learned Trial Judge in C.C.No.69 of 2010 dated 11.12.2015, which was confirmed in Crl.A.No.41 of 2016 dated 06.07.2018.

15. Perused the judgment of the learned Judicial Magistrate, Tirukoilur, in C.C.No.69 of 2010 dated 11.12.2015 and the judgment of the learned Additional Sessions Judge (FTC), Villupuram, in Crl.A.No.41 of 2016.

16. On perusal of the judgment of the learned Trial Judge in C.C.No.69 of 2016, it is found to be on proper appreciation of evidence.



The learned Trial Judge had on proper appreciation of evidence arrived at the logical conclusion that the evidence of P.W.3 and P.W.5 is not found to be inspiring confidence of the Trial Court. The learned Trial Judge in his assessment of evidence and giving reasons had clearly stated that, as per the evidence of P.W.1/de facto Complainant, it is based on hearsay. The complaint given by P.W.1 does not state clearly whether the motor pump set was removed by A-1 to A-4 or he has doubt regarding their involvement. As per the evidence of P.W.1, the P.W.3 before the learned Trial Judge had informed him on 07.09.2007 and that he had preferred the complaint on 08.09.2007, without giving any doubt against the Respondents. Therefore, the then Sub-Inspector of Police had registered the complaint only as CSR. Subsequently, it was registered as FIR. Only after direction from this Court in the Criminal Original Petition against the successor Sub-Inspector of Police, who had registered FIR and proceeded with the investigation. After recording the statements of witnesses and after recovering the motor pump set from the workshop belonging to P.W.3 under recovery Mahazar, he laid the final report before the learned Trial Judge. The earlier Investigation Officer was also examined as witness in this case. He had in his evidence stated that during his investigation, he came to know that it was not a true case. Therefore, he closed it as mistake



of fact. The subsequent Investigation Officer is alleged to have recovered the pump set from the workshop of P.W.3. The only witnesses in this case are P.W.3 and P.W.5. The rest of the witnesses had turned hostile. Therefore, the learned Trial Judge had on assessment of the evidence of P.W.3 and P.W.5, commented that if the information shared by P.W.3 is true, what prevented the de facto Complainant from stating those facts in the complaint. Further, the recovery Mahazar marked before the Court differs regarding the description of the motor pump set as stated by de facto Complainant/P.W.1 in his evidence. There are loopholes in the prosecution evidence. Therefore, the learned Trial Judge had raised suspicion and granted the benefit of doubt to A1 to A4, who are none other than the brother and brother's sons and acquitted A1 to A4.

17. The learned Appellate Judge had confirmed it on appreciation of evidence.

18. As per the settled proposition of law laid down by the Hon'ble Supreme Court, the Appeal heard and disposed of by the Appellate Court, the finding recorded by the learned Trial Judge whether on the civil side or criminal side, if it is based on proper appreciation of evidence. The learned



Appellate Judge shall not disturb the finding. Even if the learned Appellate

Judge on the same set of evidence, arrives at the contrary conclusion, this is because the conclusion arrived at by the learned Trial Judge based on proper appreciation of evidence is given due weightage as the learned Trial Judge had the benefit of observing the demeanour of witness, that advantage is not available to the Appellate Court. In the light of the said proposition of law as laid down by the Hon'ble Supreme Court, the judgment of the learned Appellate Judge shall not be faulted. Nothing is found perverse from the finding recorded by the learned Trial Judge in acquitting A1 to A4 from the charges under Section 379 r/w 34 of IPC in C.C.No.69 of 2010.

19. It is also the law laid down by the Hon'ble Supreme Court regarding when two views are possible before the learned Trial Judge, the learned Trial Judge shall lean towards acquittal. Here also, that is the case. The point no.1 is the de facto Complainant in his evidence, as P.W.1 states he had information on 07.09.2007, that the motor pump set was removed from the well belonging to P.W.1, in which the 1st Respondent also had a share and it was placed by the sons of 1st Respondent in the workshop of P.W.3. The complaint was preferred on 08.09.2007 in which this fact had



not been disclosed. Subsequently, FIR was registered after 17 days. The motor pump set was recovered from the workshop of P.W.3, in which the Mahazar was recorded it and marked before the Trial Court did not contain the specific details of the missing pump set. In that circumstance, the earlier Investigation Officer, who had proceeded with the investigation, has closed it as mistake of fact. Whereas the subsequent Investigation Officer had laid the final report, arraying the brother and brother's sons as A1 to A4. In the light of those facts, the reasoning given by the learned Trial Judge cannot be found to be perverse.

20. After conclusion of the argument by the learned Counsel for the Revision Petitioner, this Court had raised a query that, as a Revision Court, this Court cannot re-appreciate the evidence as an Appellate Court. As a Revision Court, this Court can exercise discretion only on narrow compass and it does not have the same discretion as that of the Appellate Court. Therefore, the argument of the learned Counsel for the Revision Petitioner cannot be accepted. At this stage, the learned Counsel for the Revision Petitioner sought to remand the case for fresh trial. It is found to be unacceptable considering the fact that the trial had been concluded and on proper appreciation of evidence, the learned Trial Judge had acquitted A1



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to A4. If it is remanded, it amounts to harassment of A1 to A4, who stood trial. The said submission of the learned Counsel for the Revision Petitioner is found to be with a purpose to harass the brother, 1st Respondent and brother's sons, Respondents 2 to 4, for which the Court cannot be used. If it is accepted, it amounts to abuse of process of law.

21. Therefore, the **Criminal Revision Case stands dismissed as devoid of merits.** Consequently, connected Criminal Miscellaneous Petition is closed.

12.10.2023

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Index : Yes/No

Speaking/Non-speaking order



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SATHI KUMAR SUKUMARA KURUP, J.,

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To

- 1.The Additional Sessions Judge (Fast Track Court),
Villupuram.
2. The Judicial Magistrate, Tirukoilur.
- 3.The Section Officer, VR Records,
High Court, Chennai.

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12.10.2023