



Crl.RC.No352 & 253 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.01.2023

CORAM

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CRL.RC Nos.352 & 253 of 2020

AND

CRL.MP Nos. 2040, 2647 and 2648 of 2020

1.Pandian @ Gopal Pandian
2. Kanthan

... Petitioners in Crl.RC.352 of 2020

1.Ramesh Babu
2. Peer Mohammed

... Petitioners in Crl.RC.253 of 2020

vs.

State rep.by
The Inspector of Police,
P-5 M.K.B Nagar Police Station,
Chennai-600039.

... Respondents in both petitions

Prayer in Crl.RC.No. 352 of 2020: Criminal Revision Petition filed under Sections 397 r/w. 401 CrPC to set side the judgment of the learned XVII Additional City Civil Judge, Chennai in Crl.Appeal No. 157 of 2019 dated 25.11.2019 confirming the judgment of the learned Metropolitan Magistrate, FTC-II, Egmore in C.C.No.5972 of 2006 dated 21.03.2019 and consequently acquit the petitioners.

Prayer in Crl.RC.No. 352 of 2020: Criminal Revision Petition filed under Sections 397 r/w. 401 CrPC to set side the judgment of the learned XVII Additional City Civil Judge, Chennai in Crl.Appeal No. 138 of 2019 dated 25.11.2019 confirming the judgment of the learned Metropolitan Magistrate, FTC-II, Egmore in C.C.No.5972 of 2006 dated 21.03.2019 and consequently



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For Petitioners
(in Crl.RC.253 of 2020)

: Mr. R.C.Paul Kanagaraj

For Petitioners
(in Crl.RC.352 of 2020)

: M/s. S.Subramanian

For Respondents
(in both petitions)

: Mr.S.Sugendran, APP

COMMON ORDER

Criminal Revision in Crl.RC No. 352 of 2020 was filed by A2 & A3 and the Criminal Revision in Crl.RC No. 253 of 2020 was filed by the A4 & A5. These revision are arising out of the judgments in Crl.Appeal Nos. 157 of 2019 & 138 of 2019 dated 25.11.2019, confirming the common dismissal order made in C.C.No. 5972 of 2006 dated 21.03.2019. Since the issue involved in both the criminal revision petitions arising out of the same occurrence, they heard together and disposed of by a common order.

2. Brief facts of the case is that the respondent police registered a case against the petitioner in Crime No. 741 of 2004 for the offences under Section 341, 294(b), 323, 506(1) IPC r/w 34 IPC and r/w 109 IPC. After investigation laid charge sheet before the II Metropolitan Magistrate, Egmore, Chennai on file in C.C.No. 5972 of 2006. After framing charges and completion of trial, the revision petitioners in Crl.RC.No. 252 of 2020 were found guilty for the offences under Section 294(b), 341, 327, 506(ii) IPC, r/w Section 34 IPC. The revision petitioners in Crl.RC.No., 253 of 2020 were found guilty for the offences under Section 294 (b), 341, 323, 506(1) IPC, r/w



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109 IPC.

3. For easy understanding, the conviction and sentence awarded by the trial Court to the accused for offences under Section 341, 294(b), 323, 506(i) IPC r/w 109 IPC is tabulated hereunder;

Accused	Offences charged	Punishment awarded
A2 & A3	Under Section 341 r/w 34 IPC	Shall pay fine of Rs.1,000/- each and in default each shall undergo one week simple imprisonment.
	Under Section 294(b) r/w 34 IPC	Shall pay fine of Rs.1,000/- each and in default each shall undergo one week simple imprisonment.
	Under Section 323 IPC r/w 34 IPC	Each shall undergo one month simple imprisonment and to pay fine of Rs.1000/- , in default to undergo one week simple imprisonment.
	Under Section 506(i) IPC r/w 34 IPC,	Each shall undergo one month simple imprisonment and to pay fine of Rs.1000/-, in default to undergo one week simple imprisonment.
A4 & A5	Under 341 IPC r/w 109 IPC	Each shall pay fine of Rs.1000/- and in default to undergo one week simple imprisonment.
	Under Section 294(b) IPC r/w 109 IPC	Each shall pay a fine of Rs.1000/- and in default to undergo one week simple imprisonment.
	Under Section 323 IPC r/w 109 IPC	Each shall undergo one month simple imprisonment and pay fine of Rs.1000/-, in default to undergo one week simple imprisonment
	Under Section 506(i) IPC r/w 109 IPC	Each shall undergo one month simple imprisonment and pay fine of R.1000/-, in default to undergo one week simple imprisonment.

4. Challenging the aforesaid conviction and sentence, the accused



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No. 157 of 2019 and the same was made over to the XVII Additional Judge, City Civil Court, Chennai and the Accused 4 & 5 have filed appeal in Crl.Appeal No. 138 of 2018 before the Principal Sessions Judge, Chennai and the same was made over to XVII Additional Judge, City Civil Court, Chennai and the XVII Additional Judge, City Civil Court, Chennai dealt separately and dismissed the appeals, confirming the conviction and sentence passed by the Metropolitan Magistrate, Egmore. Aggrieved over the same, A2 & A3 have filed Crl.RC. 352 of 2020 and A4 & A5 have filed Crl.RC. 253 of 2020 before this Court.

5. The learned counsel appearing for revision petitioners would submit that during trial, in order to prove the charges, on the side of prosecution 13 witnesses PW1 to PW13 were examined, 7 documents were marked as Ex.P1 to P7. Even though no oral evidence was adduced on the defence side, Ex.D1 and Ex.D2 were marked on the side of the defence. The complaint shows no reference with regard to the presence of the petitioners at the place of the occurrence at the relevant point of time. The investigation officer without taking into consideration of the said fact, has developed the case by giving improved statements and further there was no previous enmity between PW1 and the accused. The evidence of PW2 clearly shows that only to wreck vengeance against the revision petitioners, PW1 has preferred false case against them. Unfortunately, the investigation officer also failed to look into that aspect and falsely laid the charge sheet against the revision petitioners.



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6. The learned counsel for the revision petitioners would further submit that initially the prosecution has not taken the case, due to the continuous pressure given by the defacto complainant/PW1, the respondent police has registered the case against the revision petitioners, otherwise no prima-facie materials to connect the revision petitioners in the case. The learned counsel for the revision petitioners would further submit that the witnesses who were examined before the trial Court as prosecution witnesses were already examined during investigation and obtained statement under Section 161 of Crpc, therefore the contradictions cannot be elucidated by the defence. Further, there is no evidence to show that the petitioners have trespassed the house of the defacto complainant at that point of time, therefore, the conviction under Section 341 IPC will not arise. There was already a dispute between the petitioners and the defacto complainant, hence she foisted a false case against the petitioners only to wreck vengeance against the revision petitioners. Both the courts failed to appreciate or re-appreciate the evidence and convicted the petitioners without any materials, therefore the judgment of the trial Court is liable to be set aside and the revision petition to be allowed and the revision petitioners to be acquitted.

7. On the other hand the learned Additional Public Prosecutor would submit that a case was registered against totally 5 persons viz., A1 to A5. A1 has not filed any revision against the order of the appellate Court.

Initially the respondent police did not register a case, later as per the



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directions of this Court, the respondent police had registered a case and investigated the matter and laid charge sheet. In order to prove the charges, on the side of the prosecution, 13 witnesses as PW1 to PW13 were examined and seven documents as P1 to P7 were marked. Out of 13 witnesses, on the side of prosecution, the defacto complainant was examined as PW1, the husband of PW1 was examined as PW2. The defacto complainant who is none other than one of the injured witnesses, had deposed that all the revision petitioners/accused came to the spot and attacked her due to which she sustained injuries, therefore the evidence of the injured witness was corroborated with the medical evidenc, therefore the trial Court rightly convicted the revision petitioners for the charged offences and the appellate Court being a fact finding court, rightly confirmed the judgment of the trial Court. Therefore the order of the trial Court and the appealate Court does not require any intereference by this Court and the revision petitions and the same is liable to be dismissed.

8. Heard the learned counsels appearing for the revision petitioners and the learned Additional Public Prosecutor appearing for the respondent police and perused the materials available on record.

9. The case of the prosecution is that there was a dispute between PW1 and the first accused pertataining to the constructions of wall by A1 in his house blocking the window of the house of PW1/defacto complainant, which is situated adjacent to the house of the 1st accused, therefore there is



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some motive between them. On 26.09.2004 at 10.30 am when A1 to A3 started construction in their house blocking the window of the house of the defacto complainant. When the defacto complainant questioned the same as to why he started construction when the police complaint is pending, the 1st accused pushed her using hand down to the ground and A2 & A3 abused the defacto complainant using filthy language and attacked her using hands, therefore the defacto complainant fell down and sustained simple injuries. A1 and A3 also threatened the defacto complainant with dare consequences. A4 & A5 had abated A1 to A3 in the aforesaid offences. Though initially no case was registered, subsequently on investigation, charge sheet was laid against A4 & A5/ revision petitioners in Crl.RC.No. 253 of 2020 for the charged offences. In order to prove the case of the prosecution, on the side of the prosecution, as stated earlier 13 witnesses were examined, 7 documents were marked and two material objects were exhibited by the defence side.

10. A careful perusal of the records, it is seen that the defacto complainant was examined as PW1, who is also an injured witness in this case. During examination, she has clearly deposed and a specific overt act was attributed against the revision petitioners and the same was also corroborated by the evidence of the doctor who was examined as PW10, who gave treatment to the defacto complainant and the witnesses have also have spoken about other ingrediants to match the charges framed against the revision petitioners. Since A1 to A3 joined together and committed the



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offence, a specific charges were framed against A1 to A3 for the offences punishable under Section 349, 341, 323 and 506 (II) r/w Section 34 IPC. Since other petitioners A4 & A5 abetted the other revision petitioners A1 to A3, and committed offence as against the defacto complainant, they have charged under Section 109 IPC. The revision petitioners are known persons and neighbours and motive was also proved. The main allegation against the petitioners is that the defacto complainant and the petitioners are neighbours residing adjacent to each other. The petitioners raised their building which prevented the easementary rights of the defacto complainant. When the same was questioned, the revision petitioners assaulted the defacto complainant and committed the offence as stated above. Therefore, in this case, the prosecution witness clearly established and both the trial Court and the appellate Court rightly appreciated the evidence and materials, convicted and sentenced the petitioners for the offences as stated above.

11. This Court being a revision Court, while exercising the revisionary power, cannot re-appreciate the evidence and substitute its own views against the findings held by both the Courts below. Unless there is any perversity in appreciation of findings or violation of any law or legal principles, this Court will not interfere with the appreciation of evidence by the Court below.



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12. In this case, there is no perversity in the findings given by the trial Court and the lower appellate Court and finds no merits in these revision petitions and the same are liable to be dismissed.

13. Accordingly, these revision petitions are dismissed.
Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes / No
Internet : Yes / No
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To

1. The Inspector of Police,
P-5 M.K.B Nagar Police Station,
Chennai-600039.

2. The Public Prosecutor,
High Court, Madras.



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P.VELMURUGAN, J.

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