



Crl. Appeal No. 138 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on	01.08.2023
Judgment Pronounced on	20.12.2023

Coram

The Honourable Mr. Justice Sathi Kumar Sukumara Kurup

Crl. Appeal No. 138 of 2021

V. Jeyaramakrishnan .. Appellant/De-facto Complainant

Vs

V.D. Kesavan
(Crime No. 1563 of 2007) .. Respondent/Accused

Criminal Appeal filed under Section 378 Cr.P.C to set aside the order of acquittal in judgment dated 17.12.2018 made in C.C.No.585 of 2008 on the file of the learned Judicial Magistrate No.II, Erode by allowing this Criminal Appeal.

For Appellant .. Mr. M. Guruprasad
For Respondent .. Mr. A. Sundaravadhanan

JUDGMENT



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The Appellant had preferred the instant criminal Appeal as against the judgment dated 17.12.2018 in C.C.No.585 of 2008 passed by the learned Judicial Magistrate No.II, Erode.

2. The brief facts, which are necessary to decide this Criminal Appeal, are as follows:-

2.1. The Complainant before the learned Judicial Magistrate No.II, Erode is the Appellant herein. The Accused in the private complaint had instituted the suit in O.S.No.216 of 2003 on the file of the learned District Munsif, Erode, against the Complainant and his two sons as Defendants. After due trial, the suit was decreed in favour of the Plaintiff (Accused before the learned Judicial Magistrate No.II, Erode). Aggrieved by the same, the Complainant in the private complaint, who was the first Defendant in the suit, filed appeal in A.S.No.31 of 2005 on the file of the learned Principal District Munsif, Erode. After hearing the arguments of both parties, the appeal was dismissed confirming the judgment of the learned District Munsif, Erode. Aggrieved by the same, the Complainant before the learned



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Judicial Magistrate No.II, Erode, who was the first Defendant in the suit

preferred Second Appeal in S.A.No.351 of 2006 before this Court. During

the pendency of the Second Appeal, the Appellant preferred C.M.P.No.4786

of 2006 seeking interim injunction against the Respondent (Plaintiff before

the learned District Munsif, Erode). After interim injunction was granted

against the Respondent (Plaintiff in the suit) in C.M.P.No.4786 of 2006 in

S.A.No.351 of 2006, the the Respondent had locked the entrance gate of the

Complainant on 26.08.2007 on the premises of the property of the

Complainant bearing Door No.338. The Complainant was conducting

turmeric business. The pathway of the Complainant was blocked by the

conduct of the Accused. Also, the Complainant was in the business of

turmeric in the name and style of V.J.P.Traders for more than fifty years.

The sample boxes kept for customers on the pathway in front of the

complainant's property was stolen by the Accused. When the complainant

went to open the door by around 6.00 a.m. on 27.08.2007, he found that the

sample boxes were missing and also locked the store outside. When

enquired, the Accused asserted that he had taken it away and also challenged

the Complainant and his sons. The Complainant had preferred a complaint

with the Erode Town Police Station but no action was taken. Therefore, the



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Complainant preferred private complaint under Section 200 Cr.P.C. before the learned Judicial Magistrate No.II, Erode and obtained order directing the

Police to register a case. Accordingly, a case was registered in Crime No.1563 of 2007. Subsequently, the investigation was dropped and Referred Charge Sheet was preferred before the learned Judicial Magistrate No.II, Erode. Even after obtaining direction from the learned Judicial Magistrate No.II, Erode the Police failed to register a case. Therefore, the Complainant preferred Crl.O.P.No.31644 of 2007 and obtained direction against the Police. Based on the direction of the High Court in Crl.O.P.No.31644 of 2007 the Police had registered a case under Section 380 and 506(ii) of IPC. Subsequently, they dropped the investigation and filed Referred Charge Sheet before the learned Judicial Magistrate. Therefore, the Complainant preferred private complaint under Section 200 Cr.P.C. After recoding the statement of the witnesses and perusing the documents, the learned Judicial Magistrate had taken on file the complaint preferred by the Complainant for offences under Section 380 and 506(ii) of IPC against the sole Accused and issued summons to the Accused. On appearance of the Accused copies were furnished under Section 207 of Cr.P.C. and after hearing the arguments of the learned Counsel for the



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Complainant and Accused, the learned Judicial Magistrate No.II, framed charges under Sections 341, 380, 447 and 506(ii) of IPC. Since the Accused denied the charges and claimed to be tried, the learned Judicial Magistrate ordered trial. During trial, the Complainant had examined himself as P.W-1 and examined three other witnesses as P.W-2 to P.W-4. Also during the trial, he had marked the FIR already registered by the Police and subsequently closed as Referred Charge Sheet and other documents under Ex.P-1 to P-16. After completion of the Prosecution evidence, the Accused was examined under Section 313 of Cr.P.C. and incriminating evidence was put to him. He denied the incriminating evidence against him. The Accused had marked documents as Ex.D-1 to D-7 and examined himself as D.W-1. After hearing the arguments of the learned Counsel for the Complainant and the Accused, the learned Judicial Magistrate No.II, Erode by judgment dated 17.12.2018 dismissed the complaint and acquitted the Accused under Section 255 Cr.P.C. Aggrieved by the same, the Complainant before the learned Judicial Magistrate No.II, Erode, had approached this Court by filing this Criminal Appeal.

3. The Complainant in C.C.No.585 of 2008 on the file of the learned



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Judicial Magistrate-II, Erode, is the Appellant herein. As per the submission of the learned Counsel for the Appellant, there had been civil dispute between the Appellant and the Respondent. A suit was instituted by the Respondent as Plaintiff. The trial Court granted decree in favour of the Respondent. Aggrieved by the same, the Appellant, as Defendant in the suit, preferred the appeal.

4. In the appeal, the decree of the trial Court was modified, against which Plaintiff went on Cross Objection and Complainant went on Second Appeal. Both the Second Appeal and Cross Objection were disposed of by this Court, confirming the Appellate Court's decree. It is the case of the Complainant that inspite of the decree, the Accused had objected the Complainant for putting up gate and lock. The Complainant has a shop adjoining the path and was selling turmeric. The sample packets meant for sale were stolen by the Accused. Also the Accused had put up the lock on the gate, thereby, preventing the Complainant from putting up or using the lock on the gate. Therefore, he had preferred a complaint to the Jurisdictional Police concerned. The Police did not take up the complaint. Therefore, he filed Crl.O.P.No.31644 of 2007 and obtained an order directing the Police



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Officials to register a case and investigate. Accordingly, the Jurisdictional Police registered an FIR. Subsequently, it was closed as "Mistake of fact".

Therefore, the Complainant had filed this complaint. After sworn statement was recorded by the learned Judicial Magistrate-II, Erode, the complaint was taken on file. After taking the complaint on file, the Complainant and witnesses were examined. Summons were sent to the Accused. On appearance of Accused, the copies were furnished under Section 207 of Cr.P.C. When the Accused was questioned, he denied the charges. Therefore, the learned Judicial Magistrate-II, Erode, ordered trial. During trial, the Complainant and his witnesses were examined. After closing the evidence of the Complainant, the incriminating evidence was put to the Accused under Section 313 Cr.P.C, which was denied by the Accused. The Accused was examined as a Defence witness as D.W-1, and after closing of the Defence evidence, the arguments were heard and on assessment of evidence, the learned Judicial Magistrate-II, Erode, by judgment dated 17.12.2018, dismissed the complaint and acquitted the Accused from the charges. Therefore, the Complainant had preferred this Appeal. The learned Counsel for the Appellant invited the attention of this Court to the contents of the complaint copy which is filed in the additional typed set of papers and



also the Judgment of the learned Judicial Magistrate-II, Erode, in paragraph 10 to 12.

5. It is the contention of the learned Counsel for the Appellant that the finding of the learned Judicial Magistrate-II, Erode, that the Complainant failed to prove the charges, is found perverse and therefore, he seeks to set aside the same.

6. The learned Counsel for the Respondent, in his reply, submitted that the complaint was taken on file based on the sworn statement given by the son of the Complainant. After taking it on file, it is seen that the Complainant had cited four witnesses in the complaint, but had examined himself as P.W.1. The Respondent's father was examined as P.W.2, and witnesses were also cross examined. In the cross examination, the dispute regarding the pathway and the judgment of the Civil Court, i.e., Trial Court and the Appellate Court which ended up in Second Appeal, which had been put up by the witnesses. Based on the materials available in the evidence, the learned Judicial Magistrate-II, Erode had acquitted the Accused from the charges. It is the further contention of the learned Counsel for the



Respondent that the pathway is a common pathway. As the judgment went

up to the Second Appeal, where the judgment of the first Appellate Court

was confirmed. After the said judgment only, the Appellant had put up the

gate preventing the Respondent from using the pathway. Originally, the case

was filed for the offences under Section 341 and 380 IPC, but while

deposing evidence, the Complainant had not stuck to the charges made

against the Accused. He had deposed evidence in respect of the offences

under Sections 506(i) and 447 IPC. Therefore, on appreciation of evidence,

the learned Judicial Magistrate-II, Erode had dismissed the complaint and

acquitted the Accused. It is a well reasoned order, and it does not warrant

any interference by this Court. The learned Counsel for the Respondent also

submitted that the learned trial Judge had the advantage of observing the

demeanour of the witnesses. Here is a case where the Complainant had

originally filed a complaint against the Accused with the local Police. The

local Police made efforts to compromise and since it was a civil dispute, they

failed to register the case. He obtained orders from the Court by filing

Crl.O.P.No.31644 of 2007 . Therefore, the local Police registered the FIR,

and on investigation, they found out that there are no materials to lay final

report against the Accused. Therefore, they had dropped the investigation as



"Mistake of fact". He has not filed any protest petition. Therefore, they only filed petition under Section 200 Cr.P.C which was only with an intention to harass the Accused/Respondent. Further, he submits that the Complainant is the paternal uncle of the Respondent/Accused. The father of the Respondent/Accused and the Appellant, are brothers and between them, there was partition. The Accused had filed the suit for partition against his father and in that, earlier, partition deed was also marked as a document. In the judgment of the same, it was discussed. While so, the Appellant had examined the father of the Accused as P.W-2 and not examined the witnesses cited by him in the complaint. The sworn statement in the complaint was recorded from the son of the Complainant, whereas, the Complainant himself had let in evidence as P.W-1 and they had not stuck on to the ingredients of the complaint and the evidence is different from the contents of the complaint.

7. Therefore, the learned Judicial Magistrate-II, Erode, on appreciation of evidence, had acquitted the Accused from the charges by judgment dated 17.12.2018. Nothing is in evidence to convict the Accused. It is a well reasoned judgment and it does not warrant any interference by



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this Court. Therefore, the learned Counsel for the Respondent seeks to

dismiss this appeal as there are no merits in the Appeal.

Point for consideration:

Whether the judgment dated 17.12.2018 made in C.C.No.585 of 2008 by the learned Judicial Magistrate No.II, Erode in acquitting the Accused from the charges, is to be set aside as perverse?

8. Perused the complaint, the deposition of the Complainant as P.W-1 and the deposition of the witnesses P.W-1 to P.W-4 viz., P.W-1 is the Appellant herein, P.W-2-Dharmalingam, P.W.3-Gopalakrishnan and P.W.4-Radhakrishnan, the documents under Ex.P-1 to Ex.P-16 were marked by the Complainant, the documents on the side of the Respondent marked as Ex.D-1 to Ex.D-7 and the deposition of the Respondent/Accused as D.W-1.

9. On perusal of the impugned judgment of the learned Judicial Magistrate No.II, Erode, in C.C.No.585 of 2006, it is found that the learned Judicial Magistrate had perused the documents, particularly, the defence of the Accused and that the dispute is with regard to the right of pathway. The



pathway is a common pathway as per the defence of the Accused. The

Complainant claimed that it is the exclusive property of the Complainant.

The evidence of the Accused as D.W-1 and the documents under Ex.D-1 to Ex.D-7 are copies of the judgment and decree of the Civil Court which reached upto the level of this Court. Therefore, the learned Judicial Magistrate had arrived at a conclusion based on the evidence available before the Court that the charges framed by the trial Court against the Accused had not been proved through evidence of Complainant. Even though the charge was under Sections 447 and 506 (i) IPC, the evidence let in by the Prosecution side did not prove the charges. Since the learned Judicial Magistrate had arrived at a conclusion that there are no materials to incriminate the Accused for the offence under Sections 448 (house trespass is not attracted) & 506 (ii) IPC (intimidation also not attracted), the learned Judicial Magistrate, had dismissed the complaint and acquitted the Accused.

10. The learned Judge had rejected the evidence of the Prosecution/Complainant. As rightly contended by the learned Counsel for the Respondent, even though the complaint was under Sections 448 and 506 (ii) IPC, in the evidence, it is deposed regarding Sections 380 and 506(ii)



IPC, but the same had not been proved. Therefore, the learned Judicial Magistrate, on the basis of the entire materials available before the trial Court and also based on the evidence of the witnesses, had arrived at a logical conclusion that the charges stated in the complaint had not been proved.

11. The charges under Sections 447 and 506(i) framed by the trial Court had not been proved by the Prosecution beyond reasonable doubt against the Accused, warranting judgment of conviction against the Accused. Further, as rightly pointed out by the learned Counsel for the Respondent/Accused, the learned trial Judge, had, on proper appreciation of evidence, as per the provisions of the Indian Evidence Act, arrived at a conclusion to acquit the Accused.

12. Here, the learned Judicial Magistrate, II, Erode, had properly appreciated the evidence available before him and on proper appreciation of evidence, acquitted the Accused.

13. Generally, the Appellate Court will not interfere in the appeal



against acquittal. It will be slow in reversing the judgment of acquittal. It has to approach the Judgment of acquittal with caution. Therefore, the submission of the learned Counsel for the Respondent/Accused that the trial Judge had acquitted the Accused on proper appreciation of evidence and does not warrant any interference by this Court, is found acceptable, specifically, in the light of the cross examination of the witnesses P.W-1 to P.W-4. Again, as pointed out by the learned Counsel for the Appellant, the sworn statement recorded by the learned Judicial Magistrate No.II, Erode, is from the son of the Complainant, whereas P.W-1 was Complainant himself/Jayaraman and that is also found to be against the principles regarding private complaint. The Complainant alone is competent to give sworn statement.

14. On a perusal of the additional typed set of papers filed by the Respondent/Accused, dated 01.08.2023, the Complainant had stated the names of witnesses in the complaint as 1. Chandrasekaran S/o Jayakrishnan; 2.Nandhakumar S/o Jayaramakrishnan; 3.Varadharajan, S/o Jayaramakrishnan and 4. Sekar, S/o Marimuthu. Whereas, during trial, the persons examined were 1.Complainant/Jayaramakrishnan, 2.Dharmalingam



and 3.Gopalakrishnan who are brothers examined as P.W-2 & P.W-3, and

4.Radhakrishnan, Inspector of Police, examined as P.W.4 who had in his evidence, clearly stated in cross examination that upto the appellate stage, judgment was rendered in favour of the Respondent. Therefore, based on proper appreciation only, the learned Judge had acquitted. This Court, as Appellate Court, shall not disturb the finding of the acquittal recorded by the learned trial Judge and is not inclined to reverse the finding of acquittal recorded by the learned Judicial Magistrate-II, Erode, in judgment in C.C.No.252 of 2008 dated 17.12.2018. This is because this Court does not have the advantage of observing the demeanour of the witnesses. Therefore, the finding of the learned trial Judge has weightage and it has to be respected.

15. In the light of the above discussion, the arguments of the learned Counsel for the Appellant is rejected and the learned Counsel for the Respondent is accepted and the point for consideration is answered in favour of the Respondent/Accused and against the Appellant/De-facto Complainant. The judgment dated 17.12.2018 made in C.C.No.585 of 2008 by the learned Judicial Magistrate No.II, Erode, acquitting the Accused from the charges, is



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found well reasoned judgment. That does not warrant any interference by this Court exercising the power under Section 378 of Cr.P.C. This appeal lacks merits and hence, the same is to be dismissed.

In the result, **this Criminal Appeal stands dismissed.** The judgment of acquittal passed by the learned Judicial Magistrate – II, Erode dated 17.12.2018 made in C.C.No.585 of 2008 is confirmed.

20.12.2023

vsn/srm

Internet:Yes/No

Index:Yes/No

Speaking/Non-speaking order



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To

The Judicial Magistrate No.II,
Erode

SATHI KUMAR SUKUMARA KURUP. J.



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vsn/srm

Judgment made in
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20.12.2023