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Crl.A(MD) No.378 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 05.07.2023

Pronounced on: 04.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE **P.DHANABAL**

CRIMINAL APPEAL(MD)No.378 of 2016

P.Petchimuthu

.. Appellant

Vs.

1. Karunakaran
Sub Inspector of Police
Prohibition Wing
Near North Police Station,
Tuticorin

2. Muthusamy
Head Constable
Prohibition Wing
Near North Police Station,
Tuticorin

...Respondents

PRAYER : Criminal Appeal is filed under Section 375(4) of Cr.P.C to call for the records pertaining to the judgment in S.C. NO.191 of 2009 dated 25.04.2016 on the file of the Principal District and Sessions Court, Tuticorin and and set aside the same.

For Appellant : M/s.Seeni Syed Amma

For Respondent : Mr.M.Sakthikumar
Government Advocate(Crl.Side)



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JUDGMENT

This Criminal Appeal has been preferred against the judgement in S.C.No.191 of 2009 dated 25.04.2016 on the file of the Principal District and Session Court, Tuticorin, wherein the said Sessions case has been committed to the Special Court for Human Rights Violation Cases/ Principal District and Sessions Court, Tuticorin by the Chief Judicial Magistrate Court, Tuticorin based on the private compliant given by the appellant herein as against the respondents.

2. When the matter was posted for trial the appellant i.e., complainant was irregular in apperance before the trial Court and not co-operated for trial and thereby the trial Court after referring the statements recorded before the committal court acquitted the accused and pronounced the judgment on 25.04.2016. Aggrieved by the said judgment passed by the trial Court the present appeal has been filed by the defacto complainant.

3. The case of the appellant is that he belongs to Mudivaithanenthall and on 28.12.2006 at about 10.00 a.m.,he was proceeding along with his mother from Mudivaithanenthall to



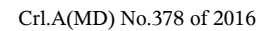
Tuticorin, at that time he went to Chidambara Nagar Canara Bank Branch and obtained loan by pledging the jewels and thereafter at about 11.30 a.m., when he reached the Tuticorin bus stand the respondents came there in a two wheeler and forcibly took the appellant in an auto rickshaw. When the same was questioned by the mother of the appellant both the respondents stated that they are taking the appellant for enquiry and after completing the enquiry they would send him back to the home, but thereafter the appellant did not return home. On the next day when the mother of the appellant came to bus stand for searching the appellant she saw the appellant there in the bus stand with injuries all over his body. Further the police assaulted the appellant in a black and blue manner all over his body as if he was selling liquor illegally. Further the second respondent has taken a sum of Rs.24,850/- from the appellant and also abused him in filthy language. Both the respondents wrongfully confined the appellant and thereafter on 29.12.2006 one Sudalaimuthu gave him some medicine and sent him through bus to his house. On the same day i.e, on 29.12.2006 the appellant was admitted in Tirunelveli Medical College Hospital and had taken treatment as inpatient till 02.01.2007. Thereafter the appellant had sent complaint to the District Collector, District Court, District Superintendent of Police. Immediately the respondent threatened the



appellant herein over phone to withdraw the complaint otherwise they would take action against him under Goondas Act, thereby the respondents have committed offence under Sections 2(d) r/w.30 of The Protection of Human Rights Act, 1993 and Sections 365,323 and 342 of IPC.

4. Thereafter the petitioner preferred compliant before he Chief Judicial Magistrate Court, Tuticorin for the Human Rights Violation as well for the offences committed by the respondents. The above said complaint was taken on file by the learned Chief Judicial Magistrate, Thoothukudi in P.R.C. No.02 of 209 and after examining the witnesses and after completing all the legal formalities had committed the case to the Court of Sessions vide order dated 27.07.2009.

5. After receipt of case records from the committal court the learned Principal District and Sessions Judge, Designated Special Court for the Protection of Human Rights Act, 1993, Tuticorin has taken the case on file in S.C.No.191 of 2009 and thereafter the case was posted for examination of witnesses and for appearance of appellant. Before the trial Court the appellant did not appear and not cooperated for trial and thereby the trial Court has passed an



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d) The learned Principal District and Sessions Judge, Tuticorin failed to consider the serious health condition of the petitioner while passing the judgment since the wife of the petitioner has already filed memo before the Court below to indicate the health condition of the petitioner dated 18.04.2016 along with medical records and medical memo was also duly received by the Court below. But the learned Judge did not consider the vital point and passed the judgement of acquittal, hence the order of acquittal has to be set aside and ought to have remanded back.

7. Upon hearing both sides and perusing the judgments of the trial Court and other records the only point for determination in this appeal is whether the judgment passed by the trial Court in S.C.No. 191 of 2009 by acquitting the accused dated 25.04.2016 is sustainable in law and facts.

8. In this case the learned Chief Judicial Magistrate, Tuticorin has committed the case under Section 209 of Cr.P.C., since the offences are triable by the Special Court under the Protection of Human Rights Act, 1993 . After receipt of case records from the learned Chief Judicial Magistrate the learned Principal District and



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Sessions Judge, Tuticorin has taken cognizance for the offences under Section 2(d) r/w.30 of the Protection of Human Rights Act, 1993 and also framed charges as against the respondents for the offences under Sections 365,342 and 352 of IPC and thereafter the case was posted for examination of witnesses. In the meantime the appellant herein who is defacto complainant has filed a petition before this Court in Crl.O.P(MD) No.11194 of 2012 for appointment of new Special Public Prosecutor to conduct the Sessions Case in S.C. No. 191 of 2009, thereafter the case was periodically adjourned. On 07.03.2006 the trial court has posted the case for trial and thereafter adjourned to 14.03.2016 and on that date the complainant appeared before the Court and filed memo stating that Crl.O.P(MD) No.11194 of 2012 is pending before the High Court and thereafter the case was adjourned to 21.03.2016 for trial and on that date also there was no representation for the complainant and thereafter the case was posted to 04.04.2016 by issuing notice to the complainant for commencement of trial and the same was returned unserved and again posted the case to 04.04.2016. On that date also the complainant was not present and thereafter the case was posted to 11.04.2016 and on 11.04.2016 also there was no representation for the complainant. Again the case was posted to 18.04.2016 and on that date also there was no representation for the complainant and



therefore the case was posted to 25.04.2016 for pronouncing judgement and on the same date judgement was pronounced.

9. According to the appellant he filed a petition before this Court in Crl.O.P(MD) No.11194 of 2012 for appointment of Special Public Prosecutor in this case and the same is pending before this Court and thereby he filed memo before the Sessions Court. After recording the said memo immediately the court posted the case for trial. On careful perusal of the notes paper, it shows that so many chances were given to the appellant but he failed to appear and on the last date of hearing the wife of the appellant had filed a petition to adjourn the case but the learned Principal District and Sessions Judge has rejected the same and posted the case for judgment.

10. On perusal of the records it is seen that there is no documents found that the trial Court had issued summons to the witnesses for examination and posted the case for trial and the witnesses failed to appear on summons. The trial Court ought to have issued summons to the witnesses and if they failed to appear on summons then would have followed the procedures by taking coercive steps by issuing bailable Warrant and thereafter Non Bailable Warrant. But without following these procedures the trial



Court had straight away passed judgement without examining any of the witnesses. Even the complainant was absent, the trial Court ought to have issued summons to other witnesses. Further the trial Court after analysing the records, statement recorded before the committal court i.e., the Chief Judicial Magistrate Court, Tuticorin had acquitted the accused. The statement recorded by the learned Chief Judicial Magistrate, Tuticorin are to find out *prima facie* offence to take the case on file and those statements were recorded in the absence of the accused and based on those statements the trial court cannot pass any orders.

11. Further it appears that the defacto complainant was examined before the Committal Court and thereafter he was cross examined on 15.10.2008 and now question arise as to how the cross examination was done before taking cognizance and further how the trial court had discussed about the statement recorded before the Chief Judicial Magistrate in the Sessions Case. All these procedures adopted by the trial Court are gross procedure violations which would affect the root of the case. However on seeing the notes papers of the trial Court it reveals the attitude of the appellant that he failed to appear before the trial Court and then filed petition through his wife seeking adjournment. After filing complaint the appellant himself has



not co-operated to dispose the case for the reason that petition is pending before this Court for appointment of Special Public Prosecutor to conduct his case, since there was not interim stay granted the trial Court shall proceed with the case further. However the trial court has failed to follow the procedures in examining the witness by issuing summons to witnesses and thereby it is appropriate to allow this appeal and remanded the matter before the trial Court for examining the witnesses. If the witnesses are not co-operating with the trial, the trial Court is directed to take steps in accordance with law. The appellant is also directed to co-operate for speedy disposal of the case.

12. In the result, this Criminal Appeal is allowed and the judgement passed by the learned Principal District and Sessions Judge, Thoothukudi in S.C. No.191 of 2009 is hereby set aside and the case is remanded back to the trial court for fresh consideration. The trial Court is directed to conduct trial by examining the witnesses and the above trial proceedings shall be completed within a period of three months from the date of receipt of a copy of this order. Both the parties are directed to co-operate for trial and if they failed to co-operate for speedy disposal of the trial, then the learned Sessions Judge shall immediately address to this Court by sending



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report to this Court for taking further action and the respondents also
can approach this Court to prevent the abuse of process of law.

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To

1. The Principal District and Sessions Court, Tuticorin
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

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