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Crl.A(MD)No.108 of 2012



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 26.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.A.(MD)No.108 of 2012

Rasal Raj

... Appellant/Complainant

vs.

1.Gopal @ Gopalan
2.Muthukumar
3.Paul Dass
4.Rabi
5.Joseph
6.Poomari
7.Suresh
8.Rajesh
9.Isac Sundar
10.Chellathurai

... Respondents/A1 to A10

PRAYER : This Criminal Appeal has been filed under Section 378 Cr.P.C., to call for the records from the lower Court namely, Chief Judicial Magistrate, Nagercoil, Kanyakumari District in C.C.No.8 of 2006, dated 14.03.2012 and to set aside the Judgment of the lower Court by convicting the accused.

For Appellant : Mr.K.Prabhu

For Respondents : Mr.C.Muthu Saravanan



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JUDGMENT

This Criminal Appeal is filed against the order of acquittal passed in C.C.No.8 of 2006, by the learned Chief Judicial Magistrate, Nagercoil, Kanyakumari District, dated 14.03.2012.

2.The case of the appellant is that on 31.10.2005 at about 04.00 p.m., when the appellant were talking together in his house along with Tennis and Salim, A2 to A5 and A10 came there and taken the appellant to the police station for enquiry, they threatened the appellant not to enter into the subject land admeasuring 5 cents and also compelled him to hand over the said land in favour of the first accused. They also compelled to withdraw the civil case filed by him as against the first respondent/first accused. They also abused him in filthy language and attacked him with hands on his cheek and back on his body. He was illegally detained till 04.00 p.m to 11.00 p.m. They also robbed a sum of Rs.305/- from his pocket. Thereafter, the appellant was directed to go to the police station on the next day morning at about 09.00 a.m. When the appellant has appeared on the next day at about 09.00 a.m, again they have compelled him to withdraw the case and also handed over the property in favour of



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the first accused. On the instigation of the first accused, all the accused went to the subject property and demolished the compound wall to the length of 120 feet by using crowbar and caused damage to the tune of Rs. 25,000/-. When it was questioned by the appellant, he was threatened with dire consequences by all the accused persons. They had also plucked the coconuts from the coconut trees, which was located in the said property. Hence, the appellant lodged a private complaint under Section 200 of Cr.P.C.

3.On the side of the appellant, he had examined P.W.1 and exhibited 8 documents as Ex.P.1 to Ex.P.8. On the side of the respondents, they had examined D.W.1 and marked 3 documents as Ex.D.1 to Ex.D.3.

4.On perusal of the oral and documentary evidence, the trial Court found that A1 and A6 to A9 not guilty for the offence under Sections 447, 427, 506(2) and 379 IPC and found A2 to A5 and A10 not guilty for the offence under Sections 323, 342, 166, 294(b), 379 and 506(1) IPC. Aggrieved by the same, the appellant has filed the present appeal.



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5.The learned counsel for the appellant would submit that the appellant and the first accused are brothers. There was a civil dispute between them, in respect of which, the appellant had filed a suit in O.S.No.193 of 2005 on the file of the District Munsif Court, Padmanapuram, in which, an order of interim injunction was granted in favour of the appellant as against the first respondent. Even then, the first accused along with his family members with the help of police persons trespassed into the house of the appellant and attacked him with hands. They also demolished the entire compound wall and caused damage to the tune of Rs.25,000/-. They also plucked the coconut from the coconut trees. P.W.1 categorically deposed and it was also corroborated by P.W.2. Even then, the trial Court had acquitted the respondents on the ground that the complaint was belatedly lodged and the appellant had failed to prove his case beyond any doubt. He would further submit that the appellant was illegally detained on 30.10.2005 and on the next day, he was remanded to judicial custody on the false complaint lodged by the first respondent in Crime No.396 of 2005, on the file of the Pudhukadai Police Station, Nagercoil, Kanyakumari District. That apart, eventhough an order of interim injunction was granted in favour of the appellant without considering the Court order, they trespassed into the house and subject property and demolished the entire compound wall. In order to



prove his case, the appellant also marked Ex.P.1 to Ex.P.8. Even then, the trial Court without considering the above documents which are filed by the appellant, had mechanically acquitted the accused persons.

6.Per contra, the learned counsel for the respondents would submit that the subject property is under dispute. Originally, the subject property was owned by the first respondent. In fact, the appellant trespassed into the house and had stolen the coconuts. Therefore, the first respondent herein lodged complaint and the same was registered in Crime No.396 of 2005, on the file of the Pudhukadai Police Station, Nagercoil, Kanyakumari District for the offence under Sections 447, 427, 379, 294(b) and 506(ii) IPC. In pursuant to the registration of FIR, the appellant was arrested and remanded to judicial custody. In fact, the appellant had filed a quash petition before this Court and the same was also dismissed and now he is facing trial in C.C.No.46 of 2011, on the file of the learned Chief Judicial Magistrate, Nagercoil. The respondents 2 to 5 and 10 are the police personnels of Pudhukadai Police Station and they have been falsely implicated as accused. They never entered into the subject property and the appellant was never detained under illegal detention at any point of time. Though the appellant deposed that he was talking along with his friends, all the accused persons trespassed into the



subject land and demolished the compound wall. The appellant did not examine any of his friends in support of his case. He examined only P.W. 2 and he also failed to support the case of the prosecution. Therefore, the trial Court has rightly acquitted them and prayed for dismissal of the appeal.

7.The crux of the complaint is that on 31.10.2005 at about 04.00 p.m., all the accused persons trespassed into the house of the subject property and demolished the entire compound wall belonging to the appellant. Even after obtaining an interim order of injunction in O.S.No. 193 of 2005, on the file of the learned District Munsif Court, Padmanapuram, they entered into the subject property and demolished the entire compound wall. They also plucked the coconut from the coconut trees.

8.A perusal of the records revealed that the alleged occurrence was taken place on 31.10.2005. The appellant was taken to illegal custody by the police personnels of Pudhukadai Police Station on the same day and he was let out after the enquiry and he was directed to appear on the next day ie., on 01.11.2005. If at all the appellant was detained under illegal detention, he could have very early lodged a complaint before the higher



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officials on the same day. He did not lodge any complaint before the higher officials on the same day on 31.10.2005 and he straightaway filed a private complaint. Though the private complaint was taken cognizance for the offence under Sections 447, 427, 379, 294(b), 323, 342, 166, 506(1) and 506(ii) IPC. In order to prove the same, the appellant did not examine any witness in order to corroborate his evidence. In support of his evidence, he had examined P.W.2. P.W.2 also failed to support the case of the appellant.

9. Even according to the appellant, he obtained an interim order of injunction in O.S.No.193 of 2005 as against the first respondent in respect of the said property in S.No.460/15 admeasuring 5 cents. However, the appellant failed to file any contempt petition against the first respondent for violation of the interim order granted by the civil court. In fact, the first respondent lodged a complaint and the same has been registered in Crime No.396 of 2005 for the offence under Sections 447, 427, 379, 294(b) and 506(ii) IPC. The appellant was arrested and remanded to judicial custody. Even at the time of enquiry, he did not make any statement to the effect that he was illegally detained on 31.10.2005 itself and he was compelled and threatened to hand over the entire subject property in favour of the first respondent herein. Against



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the same, the appellant filed a quash petition to quash the entire proceedings in C.C.No.46 of 2011 on the file of the learned chief Judicial Magistrate, Nagercoil and the same was also dismissed and as of now, he is facing trial.

10.In view of the above, the trial Court had rightly acquitted the respondents and this Court finds no infirmity or illegality in the order passed by the Court below. Hence,the appeal is liable to be dismissed.

11.Accordingly, this Criminal Appeal stands dismissed.

26.04.2023

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NCC : Yes/No

Index: Yes/No

Internet: Yes/No

To

1. The Chief Judicial Magistrate, Nagercoil, Kanyakumari District.

2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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