



Crl.A.No.370 of 2020

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.08.2024

CORAM

THE HONOURABLE MRS. JUSTICE **R. HEMALATHA**

Crl.A.No.370 of 2020

Thangamuthu ... Appellant

Vs.

K.Sivakumar ... Respondent

Prayer : Criminal Appeal filed under Section 378 Criminal Procedure Code 1973, against the judgement and orders dated 23.03.2020 passed in C.A. No.108 of 2017 by the learned III Additional District and Sessions Judge, Tiruppur, Dharapuram, reversing the judgement and orders dated 22.11.2017 passed in C.C. No.188 of 2013 by the learned Judicial Magistrate, Dharapuram.

For Appellant : Mr. K. Sujeetha
for Mr. S. Doraisamy
For Respondent : Mr. K.S. Karthik Raja



Crl.A.No.370 of 2020

WEB COPY

JUDGMENT

Challenging the order of acquittal dated 23.03.2020 passed in C.A. No.108 of 2017 by the learned III Additional District and Sessions Judge, Tiruppur, Dharapuram, the present appeal is filed by the appellant / complainant.

2. For the sake of convenience the parties are referred to as per their ranking in the trial court and at appropriate places, their ranks in the present appeal would also be indicated.

3. The complainant filed a private complaint under Section 200 Cr.P.C. before the Judicial Magistrate, Dharapuram against A1 to A11 under Sections 143, 147, 294 (b), 323, 355, 447, 506(i) and 506(ii) IPC. In the private complaint, the complainant had averred that he has a civil dispute with A1 to A3 which culminated into the filing of suits in O.S.Nos.315/01, 374/01, 48/01 and 124/11 and 191/12 pending on the file of the District Munsif, Dharapuram. While so, the Tahsildar,



Crl.A.No.370 of 2020

WEB COPY

Dharapuram, issued a notice to the complainant on 04.02.2013, stating that the land of the complainant has to be surveyed as per the directions of this Court. He also directed the complainant to submit his documents and explanation in this regard. Subsequently, the Tahsildar issued another notice dated 25.03.2013 to the complainant to survey his properties. According to the complainant the action of the Tahsildar is due to political intervention. However, on 5.4.2013, Panneer Selvam, the land surveyor (A9), Jayaprakash, the Village Administrative Officer, Uthupalayam (A10) and his Assistant Sankaran @ Sankar (A11), C.P.Chinnasamy (A1), Chandrasekaran (A2), Sivaraj (A3), Govindaraj (A4), Eswaran (A5) trespassed into his lands. Since the complainant raised an objection, they could not survey the land. However, on 06.04.2013, at about 2 p.m., without any prior intimation to the complainant, the accused 9 to 11 along with the Inspector of Police (A6), Dharapuram Police Station and Special Sub Inspector of Police (A7), Alangium Police Station, Head Constable of Police (A8), Alangium Police Station along with 30 other persons once again trespassed into his land with JCB machine. When the complainant confronted the police officials,



Crl.A.No.370 of 2020

WEB COPY

A6 abused him in filthy language and also physically assaulted him. The hooligans who accompanied A1 to A5 uprooted seven well grown trees and put up a fence inside the land of the complainant. The complainant, therefore, lodged a complaint with the Special Sub Inspector of Police, Alangium Police Station on 06.04.2013. Since no action was taken by the police, he filed a private complaint under Section 200 Cr.P.C. before the Judicial Magistrate, Dharapuram.

3.1. The learned Judicial Magistrate took cognizance of the offence and after analysing the evidence on record convicted the 6th accused Sivakumar alone for an offence punishable under Section 355 IPC and sentenced him to undergo Simple Imprisonment for a period of one year vide his judgment and orders dated 22.11.2017, as against which A6 filed an appeal in C.A. No.108/2017 before the III Additional District and Sessions Judge, Tiruppur, Dharapuram. The learned Sessions Judge, after analysing the evidence on record acquitted A6 vide his judgment and orders dated 23.03.2020. Aggrieved over the same, the complainant has preferred the present appeal.



Crl.A.No.370 of 2020

WEB COPY

4. Heard Mr. K. Sujeetha, learned counsel for the appellant and Mr. K.S. Karthik Raja, learned counsel for the respondent.

5. It is pertinent to point out that when two views are possible, the view which is favouring the accused has to be taken into consideration. It is seen from the records that P.W.1 and his sons were arrested by the police on the same day, i.e., 06.04.2013 based on the complaint given by A1. The complainant did not state that he was physically assaulted by A6 to the Magistrate who remanded him to judicial custody. Apart from that, P.W.1 and his sons were also sent for medical check up before producing them to Judicial Magistrate for remand. The complainant did not take steps either to produce the medical records or examine the doctor who treated him. Furthermore, A6 went to the land of P.W.1 along with a team of police officials at the request of the Revenue Official and as per the directions of the Court. The lower appellate court in his judgment has observed thus:

" Whatever it may be, we have to consider about that whether the acts said to have been done by the Appellant/ A6 was



Crl.A.No.370 of 2020

WEB COPY

happened while he was discharging his official duty or not?

It is already seen that the Appellant/A6 was entered into the land in dispute with the order of the Tahsildar to give protection to the A9 to A11 to execute their work. Therefore there is no doubt that the alleged offence have been committed on discharging his official duty of the Appellant/A6. Hon'ble Apex Court in a case precedence reported in Satyavarat, Shri Niwas Vs. State 1992 Rajdhani LR 460 held that "even if there are excesses committed by the Police at the time of questioning even then police officer could not be prosecuted without the sanction required under section 197 Cr.P.C., and therefore, the Magistrate could not proceed under Section 200, Cr.P.C. In a case law reported in 1997 Cri.L.J. 1210 - Satish Chandra Vs. Union Of India it is held by Hon'ble Apex Court that

Para 9." In this case also even if while taking possession it is presumed that some excesses were committed which resulted in damage to the material lying there that by itself is no ground too ignore the requirement of law as stipulated under Section 197 of the Code and the provisions of Section 186 of the Railways Act which expressly bar prosecution of a railway servant without the sanction of the competent authority."



Crl.A.No.370 of 2020

WEB COPY

The above case precedences are squarely applicable to the case in hand. In the case in hand it is proved that the Appellant / A6 and his other Police assistance were entered in to the land in dispute under the order of the Tahsildar (Ex.D11) to give protection to measure the land. As alleged by the PW1 if there was some excesses have been committed it cannot be treated as it was not happened while discharging his official duty. Further it is already seen that the alleged offence under section 355 IPC was not proved by the prosecution. Whatever it be sanction for prosecution under Section 197 Cr.P.C., is essential to cognizance the offence against the Appellant/A6 since he is being a public servant, which is not considered by the trial Court in this case.

The learned Advocate who appeared for the Appellant / A6 would further argued that the trial Court failed to appreciate the Ex.P7 which is a copy of complaint sent by the wife of PW2 Boopathi to the Chief Minister Cell on 08.04.2013. On considering this aspect, it is observed that the wife of PW2 Boopathi was sent a letter to the Chief Minister Cell. The copy of that letter is marked in this case as Ex.P7 which reveals the happenings on 06.04.2013 in the



Crl.A.No.370 of 2020

WEB COPY

place of occurrence. The same has been sent to the Chief Minister's Cell on 08.04.2013 by the wife of PW2 namely Sakunthala. But the averments of the Ex.P7 doesn't disclose any thing about the uttering of obscene words and assault made by the Appellant / A6 on the PWI and his sons. If the assault said to have been made by the Appellant / A6 on the PWI and his sons is true definitely it would be mentioned in the Ex.P7. But no such events mentioned in the Ex.P7. Further, the presence of Sakunthala in the place of occurrence at the time of occurrence is admitted by the PWI and his son Selvaraj in their evidence. But she was not examined as witness by the prosecution side, for which no any explanation given from the prosecution side during trial. It is also not considered by the trial Court.

It is further noted that a Criminal case was registered against the P.W.I and his sons on the same day on 06.04.2013 upon a complaint given by the deceased 1st accused Chinnasamy. The P.W.I and his sons were arrested by the Appellant / A6 on the same day and sent to remand. These things are admitted by the PWI during his cross examination itself. But neither the PWI nor his sons made any complaint about the uttering of obscene words and assault



Crl.A.No.370 of 2020

WEB COPY

made by the Appellant / A6 before the Magistrate at the time of remand. The son of PW1 namely Selvakumar admitted in his cross examination that before they sent to prison they were taken to the medical check up to Govt. Hospital, where they shown the injuries caused to the PW1 to PW3, which were noted by the doctor. But no any medical report produced in this case or any doctor examined to prove the fact that the PW1 to PW3 were sustained injuries due to the assault of the Appellant / A6 and A7 and A8 on 06.04.2013 in the place of occurrence. No any medical records to show that the PW1 and his sons were sustained injuries due to the assault of the Appellant / A6. Even though it is answered by the PW1 and other witnesses that due to the threatening of Appellant /A6 the injuries caused to them was not said to the Magistrate at the time of remand, it is being unbelievable. These things are not considered by the trial Court in its judgment.

In the above circumstances, considering the facts stated above, it is obvious that the trial Court has not considered the above points and the appeal is deserved for set aside, therefore, the judgment passed by the trial Court



Crl.A.No.370 of 2020

WEB COPY on 22.11.2017 in the case CC 188 of 2013 is set aside.
Accordingly ordered.

In the result, this criminal appeal is allowed and the trial court's Judgment dated 22.11.2017 in CC 188 of 2013 is hereby set aside and the accused is acquitted. No any fine imposed by the trial Court to the accused. No any order as to property since no any recovery made in this case."

The above observations of the lower appellate court cannot be found fault with.

6. In the result,

- i. The Criminal Appeal is dismissed.
- ii. The judgement and orders dated 23.03.2020 passed in C.A. No.108 of 2017 by the learned III Additional District and Sessions Judge, Tiruppur, Dharapuram, is confirmed.

02.08.2024



Crl.A.No.370 of 2020

WEB COPY

Index : yes/no

Speaking /Non speaking Order
bga

To

- 1.The Judicial Magistrate, Dharapuram.
2. The III Additional District and Sessions Judge, Tiruppur, Dharapuram,
- 3.The Section Officer, Criminal Section, Madras High Court, Chennai.



WEB COPY



Crl.A.No.370 of 2020

R. HEMALATHA, J.

bga

Crl.A.No.370 of 2014

02.08.2024