



DATED : 04.12.2024

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

**Crl.O.P.No.29992 of 2024
in Crl.A SR No.41051 of 2024**

Kowsalya ... Petitioner/complainant

Vs.

Kuppusamy ... Respondent / Accused

Prayer: Criminal Original Petition is filed under Section 378 (4) of Cr.P.C. praying to grant special leave to prosecute the above appeal before this Court against an order of acquittal dated 23.05.2024 made in C.C.No.84 of 2022 on the file of learned District Munsif and Judicial Magistrate Court, Kodumudi, Erode.

For Petitioner : Mr.R.Prabakar

ORDER

This Criminal Original Petition has been filed to grant special leave to prosecute the above appeal before this Court against an order of acquittal dated 23.05.2024 made in C.C.No.84 of 2022 on the file of learned District Munsif and Judicial Magistrate Court, Kodumudi, Erode.



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2. The petitioner seeks leave to file an appeal against acquittal of the respondent for the offences under Section 447, 427, 294(b), 506(ii) and 379 of IPC.

3. It is case of the petitioner that the respondent had demolished the wall constructed around the motor fixed near the well and had also abused the petitioner in filthy language.

4. According to the petitioner, he filed a complaint before the jurisdictional police; that since they did not take any action, she gave a complaint to the Deputy Superintendent of Police on 25.01.2021 and since he had also not taken any action, she filed a private complaint and the learned Magistrate had erroneously, without considering the evidence, had acquitted the accused.

5. The learned counsel for the petitioner would submit that the two grounds for acquittal, are firstly, that the complainant had stated that the occurrence took place on 10.01.2021 in chief examination whereas in the



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complaint, she had stated that occurrence happened on 11.01.2021 and therefore, the statement of the petitioner cannot be believed. Secondly , the husband of the petitioner was not examined. Hence, the learned counsel submitted that these two grounds are not sustainable; that merely because the petitioner had given a different date, her version cannot be discarded and that her husband could not be examined as he was ill and in fact, he had passed away recently; and that hence the judgment of acquittal is liable to be set aside.

6. Heard the learned counsel for the petitioner and perused the records.

7. On perusal of the impugned judgment, this Court finds that the sum and substance of the allegation is that a small room constructed around the motor was demolished and an iron pipe was stolen. The evidence adduced on the side of the petitioner, besides the evidence of the petitioner is a photograph which is of the demolished building. The learned Magistrate found that, on the basis of the said photograph, it cannot be inferred that the respondent demolished the said building. The



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learned Magistrate also found that the petitioner had not stated as to how the respondent had abused her and what is the language used so as to attract Section 294 (b) of IPC. The petitioner's husband was also not examined. Further, though the petitioner has stated that the police came to the spot for enquiry, the petitioner had not examined any of them to prove the said fact. The evidence of the petitioner is contrary to her complaint. Therefore, this court finds no infirmity in the judgment of acquittal passed by the learned Magistrate. That apart, considering the nature of allegations and the relationship of the parties, this Court is not inclined to set aside the judgment of acquittal, which is not perverse.

8. Accordingly, this Criminal Original Petition is dismissed.
Consequently, the Criminal Appeal is dismissed at the SR stage itself.

04.12.2024

Index : Yes/No
Internet: Yes/No
Neutral Citation : Yes/No
Speaking order/Non-speaking order
rgr

To

The District Munsif and Judicial Magistrate Court,



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SUNDER MOHAN, J.

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