



WEB COPY



Crl.A.No.736 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2024

CORAM :

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

Crl.A.No.736 of 2017

K.P.Shanmugam

...Appellant

vs.

1.Aandavar
2.Vaijanthimala
3.Pandian
4.Saravanan
5.K.Karthi
6.Saravanan
7.Selvam

...Respondents

PRAYER: Criminal Appeal filed under Section 378 Criminal Procedure Code, 1973, against the judgment and orders dated 26.09.2016 passed in C.A.No.159/2015 by the III Additional District and Sessions Court, Salem, reversing the judgment and orders dated 30.10.2015 passed in C.C.No.181/2010 by the Judicial Magistrate No.VI, Salem.

For Appellant : Mr.K.V.Sridharan

For Respondents : No appearance



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J U D G M E N T

WEB COPY Challenging the order of acquittal passed by the learned III Additional District and Sessions Judge, Salem, in C.A.No.159/2015, the present appeal is filed by the appellant / complainant.

2. The complainant filed a private complaint against the respondents 1 to 7 / accused under Section 200 Cr.P.C. for the offences punishable under Sections 147, 342, 323, 427 and 506(ii) IPC before the Judicial Magistrate No.VI, Salem in C.C.No.181/2010.

2.1. In the private complaint, the complainant had stated that he along with one Sekar, Kamaraj and Venkatesan jointly purchased a property in S.No.64/5 of Agrahara Valappady Village measuring 1.26 acres from one Punithavathi and his minor son Gokul @ Naveen Prakash. At the time of purchase, one Pappathy was cultivating the land as a lessee. Since she requested the complainant that she would be handing over the property after harvesting crops, the complainant agreed for the same and a muchalikka in this regard was written evidencing the same.

2.2. According to the complainant, the respondents 1 to 7/accused



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threatened him and other purchasers to sell the property in their favour.

In the meanwhile, the lessee handed over the property to the complainant and other purchasers after receiving the cost of crops cultivated by them.

2.3. On 28.01.2009 at about 10.30 A.M when the complainant and other purchasers were harvesting crops, the respondents 1 to 7 along with 60 unknown persons trespassed into their land with armed deadly weapons and assaulted all the purchasers including the complainant. They were also taken to nearby Kadampur Muniappan Temple where they were all threatened to sell the property in their favour. Since the police came down to the temple, the accused fled away from the scene of occurrence.

2.4. Thereafter, the complainant lodged a police complaint (Ex.P1) with Thiru.Sikander Basha (P.W.8), the then Sub Inspector of Police, Valappadi Police Station. A challan was issued in CSR No.79/2009 on 01.02.2009.



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2.5. Though the complainant along with other purchasers appeared before the police, their statements were not recorded by the Police. Subsequently, on 02.02.2009, the accused harvested crops worth about Rs.25,000/-.

2.6. Therefore, the complainant lodged another complaint (Ex.P3) with the Superintendent of Police, Salem, on 03.02.2009 and the Superintendent of Police directed the Deputy Superintendent of Police, Salem to conduct an enquiry. Since no action was forthcoming from police the complainant filed a private complaint under Section 200 Cr.P.C. before the Judicial Magistrate No.VI, Salem.

2.7. The learned Judicial Magistrate initially forwarded the complaint to the Inspector of Police, Valappadi Police Station under Section 156(3) Cr.P.C and an FIR in Crime No.900/2009 was registered against the respondents / accused for the offences punishable under Sections 341, 342, 323 and 506(ii) IPC. Subsequently, the police filed a referred charge sheet treating the complaint as 'mistake of facts' on 12.03.2010. Thereafter, the complainant filed this private complaint under Section 200 Cr.P.C. which was taken on file in C.C.No.181/2010



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by the Judicial Magistrate No.VI, Salem.

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2.8. The evidence of P.W.1 to P.W.4 was that on 28.01.2009, the accused along with 60 persons trespassed into their property in S.No.64/5 of Agrahara Valappadi Village and attacked them with deadly weapons, like, sticks and wooden logs. According to P.W.1, they were all taken to Kadampur Muniappan Temple which is adjacent to their land and were unlawfully detained.

2.9. Tmt.Poomalai (P.W.5), in her evidence had deposed that on 28.01.2009 when she went to Ganapathy Gounder Street, Valappadi to meet one of her relatives, she saw the accused along with 60 or 70 persons threatening the complainant and four others to execute a sale deed in their favour.

2.10. Thiru.Sudharshan (P.W.6), a resident of Ganapathy Gounder Street, Valappadi, in his evidence has stated that there was a huge crowd in his street on 28.01.2009 and when he enquired, he was informed that around 50 or 60 persons were picking up a quarrel with his friends Venkatesan, Kamaraj, Sekar and others.



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WEB COPY 2.11. Thiru.Venkatachalam (P.W.7) corroborated the versions of P.W.1 to P.W.4.

2.12. Thiru.Sikander Basha (P.W.8), the then Sub Inspector of Police, Valappadi Police Station in his evidence had deposed that on 28.01.2009, he went to Ganapathy Gounder Street to enquire the land dispute between the two parties, but could not remember as to whether the complainant and others were threatened by the accused.

2.13. The accused, when questioned under Section 313 (1) (b) Cr.P.C., with regard to the incriminating circumstances appearing in evidence against them, denied of having committed any offence. However, they did not examine any witnesses on their side.

2.14. The learned trial court judge after analysing the oral and documentary evidence on record, convicted the accused for the offence punishable under Sections 147 and 342 IPC and acquitted them for the offences punishable under Sections 323, 427 and 506(ii) IPC. The accused were sentenced to pay a fine of Rs.500/- each for the offence



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punishable under Section 147 IPC and to pay a fine of Rs.1,000/- each for the offence punishable under Section 342 IPC, in default, to undergo rigorous imprisonment for three months.

2.15. Aggrieved over the same, the accused filed an appeal in C.A.No.159/2015 before the III Additional District and Sessions Court, Salem. The learned III Additional District and Sessions Judge after analysing the evidence, found the accused not guilty of the offences punishable under Sections 147 and 342 IPC, vide his judgment and orders dated 26.09.2016 and acquitted them from all the charges framed against them, aggrieved over which, the present criminal appeal is filed.

3. Heard Mr.K.V.Sridharan, learned counsel for the appellant.

4. Though notice was served on the respondents and their names are printed in the cause list, there is no representation on their behalf.

5. It is pertinent to point out that the complainant had actually lodged a complaint with Thiru. Sikander Basha (P.W.8), the Sub Inspector of Police, Valappadi Police Station and the police had closed it



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after enquiry as mistake of fact. Subsequently, the complaint filed before the Judicial Magistrate No.VI, Salem was forwarded to the Inspector of Police, Valappadi Police Station under Section 156(3) Cr.P.C. in Crime No.900/2009. However, after investigation a closure report was filed on 12.03.2010 before the Magistrate.

6. However, the complainant had filed a private complaint under Section 200 Cr.P.C., and the Judicial Magistrate took cognizance of the offence in C.C.No.181/2010. Even in the court, the complainant had not narrated the sequence of events cogently as mentioned in his private complaint. There are several contradictions in his evidence and it is not also corroborated by P.W.5 to P.W.7. There is absolutely no evidence on record that the present appellant / complainant along with others were unlawfully detained in a nearby temple. The lower appellate Court by a well reasoned order had acquitted the accused and in the circumstances, I do not see any reason to interfere with the same.



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7. In the result,

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(i) The Criminal Appeal is dismissed.

(ii) The judgment and orders dated 26.09.2016 passed in C.A.No.159/2015 by the III Additional District and Sessions Court, Salem, is confirmed.

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Index : yes/no

Speaking /Non speaking Order

mtl

To

1. The III Additional District and Sessions Court, Salem.
2. The Judicial Magistrate No.VI, Salem.
3. The Public Prosecutor, High Court, Madras.
4. The Section Officer, Criminal Section, High Court, Madras



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R.HEMALATHA, J.

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