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Crl.O.P.No.13033 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.06.2024

CORAM :

THE HONOURABLE MR. JUSTICE M. DHANDAPANI

Crl.O.P.No.13033 of 2024

in

Crl.A.SR.No.45412 of 2023

Mohan

... Petitioner/Appellant

Vs.

1.State Rep. by the Deputy Superintendent of Police,
Vaniyambodi Sub Division,
Thirupattur District.

2.The Inspector of Police,
Natramapalli Police Station,
Thirupattur District.
Crime No.1585 of 2014

3.Raghu

4.Jagadeesan

5.Rajagopal

... Respondents/Respondents

Prayer in Crl.O.P.No.13033 of 2024 : Criminal Original Petition filed u/s.378(4) of the Code of Criminal Procedure, seeking to grant special leave to file an appeal against the judgment of the learned Sessions Judge, Special Court for Trial of Cases under SC/ST (PoA), Vellore, Vellore District in Spl.S.C.No.106 of 2020 dated 30.03.2023.

Prayer in Crl.A.SR.No.45412 of 2023 : Criminal Appeal filed under Section 372 of the Code of Criminal Procedure Code, to call for the entire records in



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connection with Spl.S.C.No.106 of 2020 on the file of the learned Sessions Judge, Special Court for Trial of Cases under SC/ST (PoA) Act, Vellore, Vellore District and set aside the judgment dated 30.03.2023.

For Petitioner : Mr.E.Kannadasan

For Respondents : Mrs.G.V.Kasthuri
Additional Public Prosecutor [R1 & R2]

ORDER

Assailing the order of acquittal dated 30.03.2023 passed in Spl.S.C.No.106 of 2020 by the learned Sessions Judge, Special Court for Trial of Cases under SC/ST (PoA) Act, Vellore, Vellore District, the present petition has been filed by the petitioner seeking leave to file appeal.

2. It is the case of the petitioner/*de-facto* complainant that he is the owner of the agriculture land in S.No.90/2 to the extent of 2.30 acres of Elarapatti Kallar Village and he had sold 1.20 acres to A1, namely Thangavelu Gounder (died) and the same was registered in the name of his wife namely Saraswathi in the year 1993 for valid consideration. Thereafter, National Highway Authorities acquired 39 cents of his land for National Development and that the remaining 71 cents the petitioner is still in possession and enjoyment of the said land. Prior to 20.04.2014, the agricultural land in



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S.No.90/2 of the petitioner at Elarapatti Kallar Village, the 1st to 4th accused not belong to the member of the SC community wrongfully occupies and cultivates the agricultural land and annexed the petitioner's land without his knowledge and consent and dispossesses him from his land to an extent of 15 cents. In view of the above dispute, on 20.04.2014 at about 6.45 hours at Elarapatti Kallar Village near Kallar bus stop, due to the said land dispute, 1st to 4th accused not being the member of the Schedule Caste Community, with the common intention of intimidating, insulting and abusing the petitioner, they called the petitioner by using his caste name, thereby the petitioner made a complaint before the law enforcing agency and the law enforcing agency filed the final report and the same was taken on file in Spl.S.C.No.106 of 2020 by the learned Sessions Judge, Special Court for Trial of Cases under SC/ST (PoA) Act, Vellore. While so, after trial, the trial court had dismissed the case by acquitting the accused 2 to 4 including the respondent herein. Aggrieved over the same, the petitioner preferred the present petition seeking to grant special leave to prefer an appeal against the said judgment dated 30.03.2023 in Spl.S.C.No.106 of 2020.

3. The learned counsel appearing for the petitioner submitted that, the eye witnesses P.W.1 and P.W.2 examined on behalf of the petitioner/P.W.3



turned hostile. However, the petitioner/P.W.3 had deposed that he know the accused and stated that out of the land to the extent of 2.30 cents, he sold 1.20 cents to the wife of A1, namely Saraswathi and some portion of the balance land was acquired by the National Highway Authorities and the remaining land was in possession of the petitioner, in which some portion was occupied by the accused persons and when the same was questioned by the petitioner, they abused the petitioner by calling his community name, thereby they committed offence punishable under the SC/ST (PoA) Act. However, without properly adjudicating the same, the trial court acquitted the accused. Hence, he submits that the petitioner will be put to much hardship, if the leave sought for is not granted. Accordingly, he prays for appropriate orders.

4. The learned Additional Public Prosecutor appearing for the respondents 1 and 2 submitted that, by considering all the materials available on record, the court below has passed the impugned judgment, which is wholly sustainable and the same does not require any interference. Accordingly, he prays for dismissal of this petition.

5. This Court perused the entire materials placed on record and the impugned judgment passed by the Court below.



WEB COPY 6. It is the consistent ratio laid down that grant of leave is not a matter of right; rather it is the edifice on which the liberty of the person, who has seen accused of a crime rests and where a person, who had been accused of a crime had been acquitted by the court below, a presumption follows the golden rule that a person is presumed innocent until proven guilty and on that basis the second presumption on the basis of the acquittal necessitates the appellate court to scrutinize the materials more carefully. Further, grant of leave to the prosecution should not be as a matter of routine, but should be on just and equitable basis, when materials reveal that the court below has not appreciated the materials in proper prospective.

7. Grant leave provided for u/s 378(4) is not an empty formality, but has been brought into the statute only to safeguard the interests of the persons accused of a crime, who have since been acquitted, as otherwise, they would be put through the rigours of continuous litigation even after their innocence has been accepted by the trial court.

8. A perusal of the entire records reveals that the petitioner is the *de-facto* complainant and he examined himself as P.W.3. In his complaint as well



as the deposition, he averred that A1 purchased 1.20 acres of the agriculture land in S.No.90/2 in Elarapatti Kallar Village and he retained the remaining land, from which, a portion of the land was acquired by the National Highway Authorities and the remaining portion of the land was unauthorisedly occupied by A1. When the same was questioned by the petitioner, 1st to 4th accused committed the alleged offence, thereby the petitioner made a complaint before the law enforcing agency. Further, the prosecuting agency examined 13 witnesses viz., P.W.1 to P.W.13, from the said witnesses, P.W.1 and P.W.2 are eye witnesses, however, they turned hostile. However, the petitioner has not proved his case before the trial court by examining independent eye witness other than P.W.1 and P.W.2. Further, the petitioner in his cross examination had deposed that for the very same land dispute, the wife of the 1st accused had already filed a civil suit in O.S.No.106 of 2014 prior to registration of the present case. By considering all the above aspects, the trial court has rightly acquitted the respondent. Therefore, the finding of the trial court cannot be interfered with.

9. Further, in order to grant leave, a case should be made out, but the present case bristles with infirmities which strikes at the root of the findings recorded. Further, in the case on hand, the petitioner, has not made out of a



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case, where the findings are so very perverse that there has been miscarriage of justice warranting this Court to grant leave to set right the wrong that has been committed by the court below.

10. No infirmities or other materials are placed which necessitates relook into the findings recorded by the court below and granting leave to appeal would be nothing but a travesty of justice insofar as the respondent is concerned, who has been acquitted through a well considered judgement passed by the court below.

11. In the aforesaid circumstances, no case is made out by the petitioner for grant of leave and accordingly, this Criminal Original Petition stands dismissed. Consequently, the Criminal Appeal is rejected at the SR stage itself.

14.06.2024

Index : Yes / No
Speaking order / Non-speaking order
NCC : Yes / No
sp

To

The Sessions Judge, Special Court for Trial of Cases under SC/ST (PoA),
Vellore, Vellore District.



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M.DHANDAPANI, J.

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