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Crl.R.C.(MD).No.877 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved On	:	20.12.2023
Pronounced On	:	19.01.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.R.C(MD). No.877 of 2023

and

Crl.M.P(MD).No.11658 and 12503 of 2023

T.Kumar @ Kumara Dhas

... Petitioner/Accused No.3

Vs.

State rep. by the
The Special Sub Inspector of Police,
Thuckalai Police Station,
Kanyakumari District.

... Respondent/Complainant

PRAYER: Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to call for the records pertaining to the impugned judgment of conviction and sentence passed by the Learned Additional District and Sessions Judge, Padmanabhapuram in Crl.A.No.176 of 2005 dated 27.10.2022 confirming the judgment of conviction and sentence passed by the Learned Judicial Magistrate Court, Padmanabhapuram in C.C.No.331 of 2001 dated 26.05.2005 and set aside the same.

For Petitioner : Mr.Karuppasamy Pandian
for Mr.B.Micheal Sebastin
For Respondent : Mr.M.Vaikkam Karunanithi,
Government Advocate(Crl.Side)



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ORDER

The petitioner is A3 in C.C.No.331 of 2001 on the file of the learned Judicial Magistrate, Padmanabapuram. The learned Judicial Magistrate, Padmanabapuram passed the conviction against him under Sections 147, 452, 352 and 506(ii) of IPC. He was convicted for the offence under Section 147 of IPC and sentenced to undergo six months simple imprisonment, for the offence under Section 452 of IPC, sentenced to undergo six months simple imprisonment and to pay a fine of Rs.200/-, in default, to undergo one week simple imprisonment, for the offence under Section 352, sentenced to undergo three months simple imprisonment, for the offence under Section 506(ii) of IPC, sentenced to undergo three months simple imprisonment.

2.The said conviction and sentence of imprisonment was confirmed in C.A.No.176 of 2005 on the file of the Additional District and Sessions Judge, Padmanabapuram. Challenging the said concurrent finding, he filed this revision.

3.According to the prosecution, dispute was lasting between the petitioner's family and P.W.1 family. Therefore, P.W.1 made a complaint against



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the petitioner's family members. The petitioner and other four accused on 06.01.2001 illegally trespassed into P.W.1's House at 10.00 p.m., and assaulted with wooden logs and caused injury to him all over his body by questioning how they could he make a complaint against his relative Palani. P.W.1 screamed and on hearing this P.W.2 rushed to his house and the accused also assaulted P.W.2 Thangamani. P.W.3, P.W.4 and P.W.5 also screamed and the petitioner and other accused criminally intimidated them by showing the wooden logs and escaped from the scene of occurrence. Thereafter, P.W.1 and P.W.2 were taken to the police station and gave a complaint and thereafter they were admitted in the hospital. The respondent police registered a case for the offences under Sections 147, 148, 452, 323, 325 and 506(i) of IPC r/w 149 of IPC. The P.W.10 completed investigation and filed the final report before the learned Judicial Magistrate, Padmanapuram. The learned Judicial Magistrate took the same on file in C.C.No.331 of 2001. He issued a summons to the accused. After his appearance, he served the 207 Cr.P.C. Documents. After that, learned trial Judge framed necessary charges and questioned the accused. He denied the charges and pleaded not guilty. He stood for trial.



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4.The prosecution to prove the case, examined the witnesses P.W.1 to P.W.10 and Exhibited Ex.P1 to Ex.P7 and marked M.O.1 and M.O.2.

5. The learned trial Judge questioned the accused under Section 313 (1) Cr.P.C, about the incriminating material available against him from the prosecution evidence. The same was denied by the accused as false. On the side of the accused no witness was examined nor document was produced.

6.The learned trial Judge after considering the above evidence and documents convicted the petitioner and imposed the sentence of imprisonment as stated above. Challenging the same, he preferred the appeal before the Additional District and Sessions Judge, Padmanapapuram, in C.A.176 of 2005. The same was also confirmed. Challenging the concurrent finding, the revision petitioner filed this Criminal Revision Case.

7.The learned counsel appearing for the petitioner submitted that according to P.W.1 this accused assaulted P.W.1 with stick on his leg. There was no corresponding injury in the doctor evidence. Further, he stated that there was contradiction regarding overt act between the evidence of eye witnesses. The



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said contradiction is material one, in view of the strong motive between the injured family and the accused family. The conviction under Section 506(ii) IPC is not legally sustainable on the ground that there was no clear evidence to the criminal intimidation made by the petitioner. He also submitted that from the available evidence, there was no material to constitute the offence under Section 352 of IPC. The Wooden logs were not recovered. The above aspects were not properly considered by both the courts below. Hence, he seeks for acquittal. He also made the alternative submission that the petitioner has no bad antecedents and hence, he is entitled to the benefit of the probation of offenders Act, 1958. for which, he relied the judgment reported in **2021 (1) MWN (Crl) Page 4**.

8.The learned Additional Public Prosecutor submitted that the both the Courts below convicted the petitioner under Sections 147, 452, 352, 506(ii) of IPC. The evidence of the injured witness is corroborated with the evidence of eye witnesses and also medical evidence. Both the Courts below correctly appreciated the evidence of the injured witnesses and other witnesses and documents produced by the prosecution and held that the prosecution proved the case beyond reasonable doubt. In the said circumstances, there is no ground to interfere in the concurrent finding. Further, the petitioner and other accused are



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said to have assaulted the injured witness by questioning how he could make a complaint against the relative of the accused to ten days prior to the occurrence. In the said circumstance, they are not entitled to the benefit of probation of the offenders Act.

9. This Court considered the rival submissions made on either side and also perused the materials available on records.

10. P.W.2 injured witness cogently deposed, before this court about the criminal trespass made by the petitioner and other accused and also assault made by the petitioner and other accused with wooden logs without any infirmity. P.W. 1 also deposed cogently about the assault made by the petitioner and the other accused. Both the witnesses have corroborated each other on the material particulars of the prosecution case. The same was also witnessed by P.W.3, P.W.4 and P.W.5. They also have clearly deposed about the assault and the occurrence without any material discrepancies. The doctor also deposed about the treatment given by him. Even though the doctor deposed that there was no corresponding injury, he specifically stated that the injuries could have been caused by the wooden logs. The investigating agency registered the case without any delay and



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conducted fair investigation and filed the final report. Even though witnesses, P.W.1 to P.W.5 were subjected to cross examination, nothing was elicited to discredit their version. Similarly, no material discrepancy was found in the evidence of the witnesses to disbelieve the prosecution case. In view of the above discussion, the petitioner's contention that there was no material to convict the petitioner under Sections 506(ii) and 352 of IPC is not available deserves to be rejected. Further, in this case there is a charge under Section 147 of IPC. Therefore, the conviction passed against the petitioner cannot be found fault with. The Hon'ble Supreme Court in the case ***State of Kerala v. Puttumana Illath Jathavedan Namboodiri***, (1999) 2 SCC 452 at page 454

5. Having examined the impugned judgment of the High Court and bearing in mind the contentions raised by the learned counsel for the parties, we have no hesitation to come to the conclusion that in the case in hand, the High Court has exceeded its revisional jurisdiction. In its revisional jurisdiction, the High Court can call for and examine the record of any proceedings for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order. In other words, the jurisdiction is one of supervisory jurisdiction exercised by the High Court for correcting miscarriage of justice. But the said



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revisional power cannot be equated with the power of an appellate court nor can it be treated even as a second appellate jurisdiction. Ordinarily, therefore, it would not be appropriate for the High Court to reappreciate the evidence and come to its own conclusion on the same when the evidence has already been appreciated by the Magistrate as well as the Sessions Judge in appeal, unless any glaring feature is brought to the notice of the High Court which would otherwise tantamount to gross miscarriage of justice. On scrutinizing the impugned judgment of the High Court from the aforesaid standpoint, we have no hesitation to come to the conclusion that the High Court exceeded its jurisdiction in interfering with the conviction of the respondent by reappreciating the oral evidence. The High Court also committed further error in not examining several items of evidence relied upon by the Additional Sessions Judge, while confirming the conviction of the respondent. In this view of the matter, the impugned judgment of the High Court is wholly unsustainable in law and we, accordingly, set aside the same. The conviction and sentence of the respondent as passed by the Magistrate and affirmed by the Additional Sessions Judge in appeal is confirmed. This appeal is allowed. Bail bonds furnished stand cancelled. The respondent must surrender to serve the sentence.



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Bir Singh v. Mukesh Kumar, (2019) 4 SCC 197 has held as follows:

16. It is well settled that in exercise of revisional jurisdiction under Section 482 of the Criminal Procedure Code, the High Court does not, in the absence of perversity, upset concurrent factual findings. It is not for the Revisional Court to re-analyse and re-interpret the evidence on record.

The revisional Court has no power to interfere with the concurrent finding of the Court below unless there is some perversity. This Court finds no perversity. This Court also finds no reason to interfere with the finding of both the Courts below. Hence, this Court confirms the conviction and sentence passed against him under the above stated offence.

11. Further the claim of the petitioner that he is entitled to the benefit of the probation of offenders Act deserves to be rejected on the ground that the petitioner and the other accused illegally trespassed into the house of the injured witness in the night hours in order to question the injured witnesses about the complaint made against the relative of the petitioner. They have not committed the offence on the spur of the moment or out of provocation. They illegally trespassed into the house in the night hours to wreck vengeance. The precedent



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relied by the petitioner is not applicable to the present case. In the said case, the petitioner was working in a Government Job. In the said case, A1 is the primary culprit and the petitioner also was inside the jail for sometime. Considering the special circumstances of that case, this Court granted the benefit. But in this case, the facts are entirely different. Therefore, the said judgment is not applicable to the present case. Therefore, he is not entitled to the relief of the probation of the offenders Act.

12. In all aspects, this Court does not find any merit in the contention of the learned counsel for the petitioner and there is no perversity in the finding of both the Courts below. Therefore, this Criminal Revision Case is dismissed. The impugned order dated 27.10.2022 passed in C.A.No.176 of 2005 by the learned Additional District and Sessions Judge, Padmanabhapuram is hereby confirmed. Consequently, connected miscellaneous petitions are closed.

19.01.2024

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
PJJ



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1. The Additional District and Sessions Judge,
Padmanabhapuram.
2. The Judicial Magistrate,
Padmanabhapuram.
3. The Special Sub Inspector of Police,
Thuckalai Police Station,
Kanyakumari District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.
5. The Section Officer,
Criminal Section(Records),
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

PJL/sbn

Pre-delivery Order made in

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and

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