



Crl.A(MD)No.298 of 2017

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : **11.07.2025**

CORAM:

THE HONOURABLE **Dr.JUSTICE R.N.MANJULA**

Crl.A.(MD)No.298 of 2025

Sam Robusst

... Appellant/Defacto complainant

vs.

1.Subbaiah

2.Selvaraj

3.Suresh Kumar

...Respondents/Accused 1 to 3

PRAYER : This Criminal Appeal has been filed under Section 378 (2) of Criminal Procedure Code praying to call for the records in C.C.No.141 of 2022 on the file of the learned Judicial Magistrate No.II, Thoothukudi District dated 08.08.2023.

For Appellant : Mr.M.Murugan

For R1 : Mr.K.Mu.Muthu

For R2 & R3 : Mr.S.Muthumalairaja

J U D G M E N T

The appeal has been filed by the defacto complainant challenging the judgment of acquittal passed by the learned Judicial Magistrate No.2, Tuticorin, dated 08.08.2023 in C.C.No.141 of 2023.



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2. On the complaint given by the appellant/defacto complainant under Section 156(3) Cr.P.C on the allegation that the appellant has been working in Tuticorin Corporation and on 27.12.2015 at about 5.50 p.m as he went to the house and was waiting there to receive his wife, Subbaiah came there and asked the appellant to go out of the bus stand. When the appellant answered him, the said Subbaiah abused him with filthy language and he was taken to police out post and was beaten up on in his back; thereafter he was made to wait along with his wife unnecessarily. The other police, who are also police officials, have scolded the appellant.

3. The Court treated the above petition as private complaint under Section 200 Cr.P.C and witnesses were examined. The Court thought it fit to do investigation. As the private respondents were police officials, the appellant was directed to obtain previous sanction.

4. Thereafter, a direction was given to the police to conduct an investigation and to file a report. Accordingly, investigation has been carried out and negative report has been filed and for which the defacto complainant filed his objection. However, the court has



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issued summons as well to try the accused for the offences under Sections 294(b) and 323 IPC. When the accused were questioned, they denied the involvement and hence, the trial was initiated. At the conclusion of the trial, the court found the accused not guilty and acquitted them.

5. The learned counsel for the appellant has made the following submissions:

i) Even though the police officials discharged their official duty, they have done a professional misconduct charging the appellant and his wife and harassing them.

ii) The appellant approached this Court as a last resort to render justice as he previously extinguished all his remedy which have no fruitful result.

iii) The lower court mechanically came to a conclusion and deviated from the charges laid against the respondents.

iv) The respondents did not give any sufficient cause for calling the appellant and his wife for enquiry to the police station.

v) The lower court has not attributed any cogent reasons for rejecting the evidence of P.W.1 and P.W.2.



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6. The learned counsel appearing for the respondents submitted that the appellant/defacto complainant did not provide any reliable source of oral/documentary evidence in order to prove the allegation. Further, the respondents in discharge of his duty have approached the appellant/defacto complainant and the mere enquiry will not affect his dignity in any manner.

7. I gave my anxious consideration to the submissions made on either side and carefully perused the materials available on record.

8. P.W.1 has lodged a complaint on 27.12.2015 at 5.15 p.m on the allegation that on the date of occurrence, he was waiting to receive his wife as it was raining. During that time, the first accused asked him to leave the bus stand. P.W.1 told him that he would leave after rain stopped and that was not heeded by the first accused. Thereafter, they pushed the appellant to the police out post by beating him and his wife also followed him. The accused 2 and 3 had told indecent statements against the appellant and embarrassed his wife. The complainant who was examined as PW1 has stated the same facts.



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9. The occurrence is said to have been taken place on 27.12.2015. But, the complaint has been given after four months without citing any reason for the delay. Sanction order has also not been obtained before prosecuting the respondents, who are the Government Officials.

10. In the cross-examination of P.W.1, it was admitted that he was standing near the long bench near the lactation room. In order to avoid any embarrassment caused to the nearby feeding woman, the respondent asked the appellant to go away from there.

11. During the cross-examination P.W.1, has admitted that his sister's house is in Chinnakannupuram. He has further stated that his sister had given a complaint with the SIPCOT Police Station against her neighbor, who was giving trouble to her; the said complaint according to P.W.1. was not properly enquired by the police; they did not carry out the proper investigation; the respondents 2 and 3 were previously posted in the SIPCOT Police Station. This part of cross-examination would reveal P.W.1's previous acquaintance with the respondents 2 and 3, while they were posted in the SIPCOT Police Station and that he was not happy



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with a way in which the complaint of his sister was dealt.

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12. It appears from the evidence of P.W.1 that he was standing near the lactation room and only because of that he was asked to go away. The trial Judge, appreciating the evidence and especially the earlier unhappy acquaintance of the the defacto complainant with the respondents, has given a benift of doubt in favour of the accused.

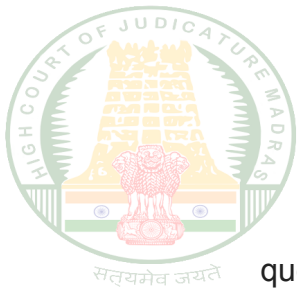
13. In an appeal filed challenging the order of acquittal passed by the trial Judge, interference cannot be made for any slightest reasons. In this regard it is appropriate to reflect the judgement the Supreme court held in **Chandrappa and others vs. State of Karnataka** reported in [(2007) 4 Supreme Court Cases 415].

The guidelines given by the supreme court are extracted herein under:

"42.From the above decisions, in our considered view, the following general principles regarding powers of the appellate court while dealing with an appeal against an order of acquittal emerge:

(1) An appellate court has full power to review, reapprciate and reconsider the evidence upon which the order of acquittal is founded.

(2) The Code of Criminal Procedure, 1973 puts no limitation, c restriction or condition on exercise of such power and an appellate court on the evidence before it may reach its own conclusion, both on



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questions of fact and of law.

(3) Various expressions, such as, "substantial and compelling reasons", "good and sufficient grounds", "very strong circumstances" "distorted conclusions", "glaring mistakes", etc. are not intended to curtail extensive powers of an appellate court in an appeal against acquittal. Such phraseologies are more in the nature of "flourishes of language" to emphasise the reluctance of an appellate court to interfere with acquittal than to curtail the power of the court to review the evidence and to come to its own conclusion.

(4) An appellate court, however, must bear in mind that in case of e acquittal, there is double presumption in favour of the accused. Firstly, the presumption of innocence is available to him under the fundamental principle of criminal jurisprudence that every person shall be presumed to be innocent unless he is proved guilty by a competent court of law. Secondly, the accused having secured his acquittal, the presumption of his innocence is further reinforced, reaffirmed and strengthened by the

(5) If two reasonable conclusions are possible on the basis of the evidence on record, the appellate court should not disturb the finding of acquittal recorded by the trial court".

14. In the present case, none of the above situation is seen to be present in order to interfere with the order of the aquittal.

15. Hence, this appeal is dismissed. The judgment dated 08.08.2023 passed by the learned Judicial Magistrate No.II, Thoothukudi District, in C.C.No.141 of 2022, is hereby confirmed.



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Index : Yes/No

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CM

To

1.The Judicial Magistrate No.II,
Thoothukudi District

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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R.N.MANJULA, J.

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