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Crl.A(MD)No.324 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reserved	10/02/2025
Date of Pronounced	05/03/2025

CORAM

THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Crl.A(MD)No.324 of 2019

Kamalakannan : Appellant/Accused

Vs.

The State,
Rep. by Inspector of Police,
Kovilpatti West Police Station,
Thoothukudi District.
(Crime No.1211 of 2014) : Respondent/Complainant

Prayer:- This Criminal Appeal is filed under Section 374(2) of Criminal Procedure Code, to call for the records of the case in Sessions Case No.34 of 2017, dated 19/06/2019 on the file of the Principal Sessions Judge, Thoothukudi, Thoothukudi District, and set aside the conviction and sentence imposed upon the appellant/accused and direct that he may be set at liberty, acquitting him from all the charges.

For Appellant : Mr.G.Thalaimutharasu
for Mr.D.Srinivasaragavan

For Respondent : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)



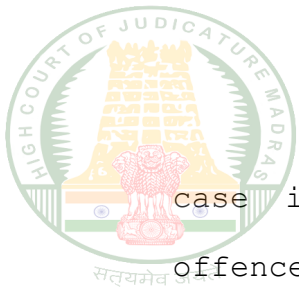
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This Criminal Appeal is filed against judgment of conviction and sentence passed in Sessions Case No.34 of 2017, dated 19/06/2019 by the Principal Sessions Judge, Thoothukudi.

2.The case of the prosecution in brief:-

The complainant Mohan and his brother are having punja land measuring an extent of 2 Acres and 76 cents in Survey No.671/1 at Pandavarmangalam Village. The land was inherited by them from their mother. On the eastern side of their land, one Anand and Kamalakannan are having their lands. Since the land was misused by miscreants, the complainant fixed fencing in his land. In the meantime, on 18/05/2014, a portion of fencing was damaged. On enquiry, he came to know that one Kamalakannan damaged the wire fencing. In order to protect his land, from 20/05/2014 to 22/05/2014, he constructed a compound wall on the western as well as northern side. On 24/05/2014 at about 06.00 am, when the complainant went to his land along with his friend, he saw that Kamalakannan was damaging a portion of northern side compound wall with crowbar. When that was questioned, he was criminally intimidated and abused in filthy language. Upon the occurrence, a complaint was lodged with the respondent police. Based on that complaint,



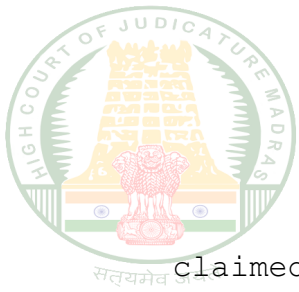
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case in Crime No.1211 of 2014 was registered for the offences under sections 294(b), 506(ii) IPC and section 3 of the Tamil Nadu Properties (Prevention of Damage and Loss) Act. After investigation, final report was filed and it was taken on file by the Principal Sessions Judge, Tuticiron. After completing 207 Cr.P.C proceedings, framed the following charges against the accused:-

(i)The complainant Mohan is having punja land in Survey No.671/1 at Pandavarmangalam Village; Due to previous enmity, on 24/05/2014 at about 06.00 am, the accused damaged a portion of the compound wall with crowbar and caused damage to the tune Rs.17,000/-. So, the accused has committed an offence punishable under section 3(1) of TNPPDL Act:

(ii)In the course of the occurrence, when the complainant questioned about the damage caused by the accused, he abused him in filthy language and thereby, the accused committed an offence punishable under section 294(b) IPC; and

(iii)In the course of the same occurrence, the accused threatened the complainant with dire consequences and thereby, he has committed an offence punishable under section 506(ii)IPC.

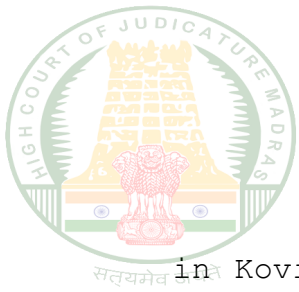


3.To that, the accused pleaded not guilty and claimed to be tried.

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4.On the side of the prosecution, 7 witnesses were examined and 5 documents marked. On the side of the accused, one witness was examined and 2 documents marked.

5.**PW1** is the de-facto complainant. The property situated at Pandvar Mangalam Village in Survey No.671/1 measuring about 2.76 acres belongs to PW1 and his brother by inheritance. They fenced the property and in enjoyment. On 18/05/2014, he went to that place and found a portion of the fencing damaged. He made enquiry with the neighbours and he was informed that the accused caused the damage. So, again, he repaired the damaged fencing. On 20/05/2014, the compound wall was constructed and completed on 22/05/2014. On 24/05/2014 at about 06.00 am, he went to that place along with PW2. At that time, he found the compound wall found damaged for about 5 feet. The accused caused the damage. When that was objected, he was abused, criminally intimidated, tried to be attacked with crowbar. So, he went to the police station and lodged the complaint under Ex.P1, which was received by **PW5**, who was working as Head Constable in Kayathar Police Station, on 24/05/2014 and issued a receipt in CSR No.233 of 2014.



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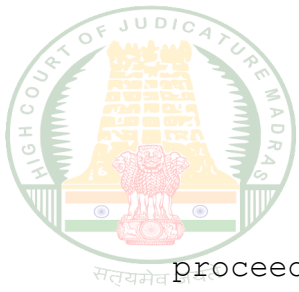
6.**PW6** when he was working as Special Sub Inspector in Kovilpatti West Police Station, received the order from the High Court, on 01/12/2014 and on the basis of the complaint given by PW1, he registered the case in Crime No.121 of 2014 under sections 294(b), 506(ii) IPC and section 3 of TNPPDL Act.

7.The investigation was undertaken by **PW7** the Inspector of Police. On 02/12/2014 at about 07.00 am, he visited the place of occurrence, prepared parvai mahazar and rough sketch and recorded the statement of the witnesses, obtained valuation certificate for the damaged compound wall under Ex.P5 and completed the investigation and filed the final report.

8.**PW2** was the friend of PW1. As mentioned by PW1, he also went to the place and witnessed the occurrence.

9.**PW3** was the present, when the Investigating Officer present in the occurrence place and recorded the statement of the witnesses.

10.**PW5** issued the valuation certificate for the damaged compound wall. With that, the prosecution side evidence was closed.



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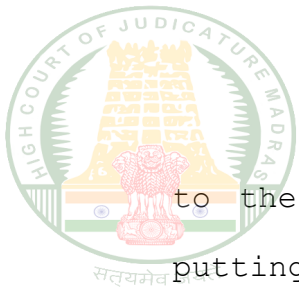
11.The accused was put to section 313 Cr.P.C proceedings. He denied the facts deposed by the prosecution witnesses.

12.At the conclusion of the trial process, the trial court found the accused guilty, convicted and sentenced him to undergo simple imprisonment for one year and to pay a fine of Rs.1,000/-, in default one month simple imprisonment for the offence under section 3(1) of TNPPDL Act; sentenced him to pay a fine of Rs.500/-, in default to undergo simple imprisonment for one week for the offence under section 294(b) IPC; and sentenced him to undergo one year simple imprisonment and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for one week and directed the sentences to run concurrently.

13.Against the judgment of conviction and sentence, this criminal appeal is preferred by the accused as appellant.

14.Heard both sides.

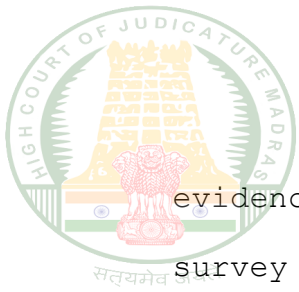
15.We will straightway go to the origin of the issue. The accused namely Kamalakannan and one Vellammal W/o.Thanivel sent petition to the Executive Magistrate/Tasildhar, Kovilpatti stating that their pathway



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to the survey Nos.671/1 and 671/2 are blocked by PW1 by putting up fencing in Survey No.671/1. So, the Executive Magistrate on 23/05/2014 issued notice to PW1 as to show cause why prohibitory order should not be passed in this regard. Apart from that, he directed to stop further construction in this regard by exercising the power under section 133 of Cr.P.C. As mentioned above, the order was passed on 23/05/2014. Now the present occurrence said to have been taken place, as per the evidence of PW1, on 24/05/2014. Nearly after a year, challenging the order of the Executive Magistrate-cum-Tahsildar, dated 03/08/2015, PW1 along with one Selvam filed **Cr1.RC No.477/2015** stating that they are in continuous enjoyment in their property for the past 24 years; The Executive Magistrate-cum-Tasildhar did not conduct enquiry in a proper manner and this accused and Vellammal did not produce any document to show that pathway has been in existence and so, the order must be set aside. That criminal revision was allowed by the coordinate Bench of this court on 09/03/2020. But from the order, it is seen that the Executive Magistrate has stopped the construction of the fencing around the property blocking the pathway on 23/05/2014 itself.

16.Now in this background, let us go to the



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evidence of PW1. He would say that he is owning land in survey No.671/1 measuring about 2.96 Acres. Originally, they fenced the property. It was damaged. So, on 20/5/2014, they put up a compound wall and completeed, on 25/02/2014. On 24/05/2014 at about 06.00 am along with PW2, he went to the occurrence place and found a portion of the compound wall damaged and this accused was damaging the western side compound wall. When he prevented the same, he was abused criminally intimidated. PW2 corroborated PW1 regarding the occurrence.

17.Now on the basis of the evidence of PW1 and PW2, the trial court has recorded a finding of guilt stating that accused caused damage to the compound wall of PW1.

18.Now the question, which arises for consideration is whether the evidence of PW1 and PW2 are believable.

19.Now we will go to the cross examination made to PW1. He was examined before the trial court on 01/09/2007 much after the enquiry conducted by the Tasildhar, Kovilpatti as mentioned above. Now he would say that no notice was received by him regarding the order passed by the Tasildhar. But he admitted that he filed Criminal Revision petition against the order of the Tasildhar. But would say that since it is a patta land, he filed the



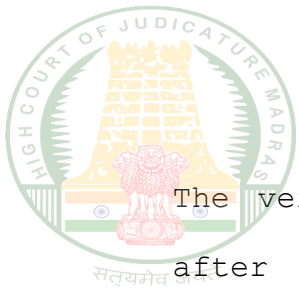
criminal revision. He would further say that he did not attend the enquiry.

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20. Reading of the evidence of PW1 does not inspire confidence at all. He very well knew that notice of enquiry was issued by the Tasildhar, Kovilpatti. He received the notice to participate in the enquiry process. Finally, the Tasildhar passed an order stopping the construction and for removing the obstruction made by him. Challenging that order only, he filed criminal revision case. Now he completely goes against his own case, suppressing all those proceedings initiated by the Tasildhar, Kovilpatti. So, this indicates that PW1 is not coming to the court with clean hands and wants to suppress the real and true issue.

21. Now PW2, as mentioned above, supports the case of PW1. He also disowns the knowledge regarding the enquiry conducted by the Tasildar, Kovilpatti. When PW1 does not inspire any confidence, naturally PW2's evidence also.

22. Now we will go to the observation mahazar. In the mahazar, it has been recorded that the compound wall put up around survey No.671/1, a portion of the compound wall was found damaged. Some of the stones were removed, found no broken pieces in that place. Inspection to the spot was made on 02/12/2014 by the Investigating officer.



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The very fact that the complaint was filed on 24/05/2014 after the order-cum-notice passed by the Tasildhar, on 23/05/2014 creates doubt as to the occurrence spoken by PW1 and PW2. But reading of the printed FIR shows that Cr1.OP(MD)No.15349 of 2014 was filed by this PW1 before this court. Based upon the order passed by this court, FIR is registered. But in the bottom, we find that an endorsement is made by the Head Constable stating that the petition was received on 24/05/2014, CSR No.233 of 2014 was issued and the case was registered on 01/12/2014.

23.As mentioned above, in the FIR, it has been stated that the order was passed by the High Court on 24/05/2014 to register the FIR. Probably the date of the order of the High Court has been wrongly mentioned, because no order copy is available. Now in the order, it is seen that on 24/05/2014 itself, the complaint was lodged, CSR No.233 of 2014 was issued. The enquiry undertaken by the police after the issue of the receipt in CSR No.233 of 2014 is not available on record. So, it has been brought to the notice of the enquiry officer in respect of the issue, proceedings were initiated by the Tasildhar under section 133 of Cr.P.C and the Investigating Officer recorded the statement of the Tasildhar, who issued notice and initiated action.

24.Now we will go to the evidence of the

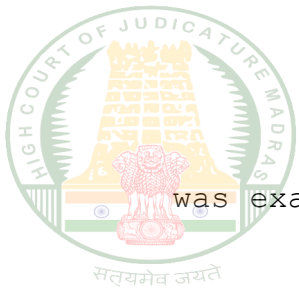


Investigating Officer. He would say that on 24/05/2014 itself, he visited the place of occurrence. He has no knowledge about the enquiry conducted by the Tasildhar in the Tasildhar Office. No seizure was made by him from the place of occurrence. He claims ignorance against over the entire pathway issue. But at that time, it was admitted that he knows the filing of the criminal original petition in by PW1. So, it is seen that the investigation itself was not taken in a proper manner. He ought to have made investigation in respect of the pathway issue, in pursuance of the order passed by the Tasildhar. Without noticing all those developments, it appears that on the basis of the damage in the compound wall, he filed the final report. It is nothing, but biased investigation.

25.Now coming to the damage. As mentioned in the mahazar, it appears that the damage was caused to the compound wall. But whether that damage was caused by the accused is a matter for consideration.

26.As mentioned above, PW1 and PW2 evidence are not believable, since they have not come to the court with clean hands.

27.The person, who issued the damage certificate



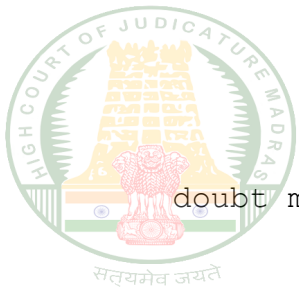
was examined on the side of the prosecution.

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28.The trial court on the basis of the evidence of PW1 and PW2 recorded a finding of guilt without taking note of PW5's evidence. He would say that on the request made by the Investigating Officer, he issued the valuation certificate. It appears that he did not visit the place of occurrence and shown the actual cost of construction and damage. So, his evidence cannot be taken into account to the cost of damage.

29.Now to the judgment of the trial court. The trial court on the basis of the evidence of PW1 and PW2 has concluded that even though pathway issue is raised by the defence, that can not be the reason for committing the criminal activity. That finding may be correct, but the circumstance under which the present complaint filed ought to have been taken note by the trial court. The very fact that after issuance of the order by the Tasildhar under Ex.D1, the complaint was given as if the accused caused damage to the compound wall on 24/05/2014 itself creates doubt, which was not taken into account by the trial court. Presence of the damage will not indicate the involvement of the appellant herein, more specifically in view of the above said inconsistency in the case of the prosecution.

30.So I am of the considered view that benefit of



doubt may be extended to the appellant.

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31. In the result, this criminal appeal is **allowed**.

The judgment of conviction and sentence passed by the trial court are set aside. The appellant is acquitted of all charges. The fine amount, if any, paid by the appellant shall be refunded. Bail bond, if any, executed shall stand discharged.

05/03/2025

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Internet : Yes/No
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To,

1. The Principal Sessions Judge,
Thoothukudi.
2. The Judicial Magistrate No. II,
Kovilpatti.
3. The Inspector of Police,
Kovilpatti West Police Station,
Thoothukudi District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G. ILANGO VAN, J



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