

Petitioner Vs. Respondent

Petitioner Vs. Respondent

SooperKanoon Citation : sooperkanoon.com/1187441

Court : Chennai

Decided On : Nov-04-2016

Judge : M. Venugopal

Appeal No. : Crl.O.P. No. 20995 of 2016 in Crl.A.SR. No. 13133 of 2014

Appellant : Petitioner

Respondent : Respondent

Judgement :

1. Heard Mrs.M.F.Shabana, Learned Government Advocate (Crl. Side) for the Petitioner/Appellant/Complainant.
2. Although notice through Court was served on the Respondent on 06.10.2016, today when the matter has come up for hearing, there is no representation on the side of the Respondent/A3 either in person or through Learned counsel.
3. The Appellant/Complainant has focused the instant Crl.O.P.No.2995 of 2016 in Crl.SR.No.13133 of 2014, seeking 'Grant of Special Leave' to prefer an Appeal before this Court as against the judgment dated 24.07.2013 in Crl.A.No.18 of 2013 passed by the Learned II Additional District and Sessions Judge, Tindivanam.
4. The Learned Government Advocate contends that there was material evidence in regard to the hatching of conspiracy between A1 to A3 and the conduct of A1 to A3 reveal that pursuant to the conspiracy, the occurrence had taken place but this

aspect of the matter was not looked into by the First Appellate Court in a proper and real perspective.

5. Advancing her arguments, the Learned Government Advocate for the Petitioner/Appellant takes a plea that the prosecution witnesses, namely, P.W.37 (Asokan), P.W.35 (Khader Khan), P.W.39(Jayasankar @ Aruna Giri), P.W.40 (Bala @ Balamurugan, P.W.41 (Giri @ Aruna Giri) tendered evidence to the effect that A1 and A2 met at Aryas Hotel, Tindivanam, which was the place of conspiracy and this was not taken into consideration by the First Appellate Court.

6. It is represented on behalf of the Petitioner/Appellant/Complainant that the First Appellate Court had failed to consider Ex.P10, appointing A2 as Invigilator in the school where A2 wrote his examination. Furthermore, it is the stand of the Petitioner/Appellant, P.W.2 (Shanmugam) had spoken about the same and also P.W.56 (Shankar) had also spoken to that effect.

7. Expatiating her submission, the Learned Government Advocate for the Petitioner/Appellant contends that P.W.1 (De-facto Complainant) had admitted that without his knowledge his signature was forged and the name of A2 was inserted in Ex.P10 and this would unerringly point out that Ex.P10 was a forged document, fabricated by A2 for the purpose of A1 to write the examination at a particular place.

8. The Learned Government Advocate for the Petitioner/Appellant/Complainant proceeds to state that P.W.43 had spoken about the conspiracy hatched between A2 and A3 on the instruction of P.W.2 (Shanmugam) and Ex.P10 was issued. Furthermore, P.W.2 had deposed that he had not signed in the document and had not mentioned A2's name in Ex.P10. However, these significant aspects were not taken into account by the First Appellate Court which has resulted in serious miscarriage of justice.

9. Lastly, it is the stand of the Petitioner/Appellant that the judgment of 'Acquittal' rendered by the First Appellate Court in CrI.A.18 of 2013 dated 24.07.2013 was based on surmises and conjectures and the same needs to be set aside by this Court in furtherance of substantial cause of justice.

10. At this stage, it is to be pointed out that the Hon'ble High Court has all requisite powers (in an Appeal against the judgment of 'Acquittal'). Prior to the reversing of 'Finding of Acquittal', the Hon'ble High Court is to bear in mind, a prime fact that the 'Presumption of innocence' is very much available in favour of an Accused. Moreover, a reappraisal of evidence can be made by the Hon'ble High Court, taking into consideration, the entire gamut of the matter in issue, arrive at a resultant conclusion by recording independent reasons/findings, than the one recorded by the trial Court (of course, resting on substantial and compelling factors/reasons) provided the findings are contrary to the material evidence on record. However, if the findings of the trial Court are not perverse, then the High Court may not replace its own opinion on a different perspective, in the considered opinion of this Court.

11. In view of the various grounds raised on behalf of the Petitioner/Appellant, in the present Crl.O.P.No.20995 of 2016, this Court is of the earnest view that they require detail deliberation in the hands of this Court, at the time of hearing of main 'Appeal'. As such, this Court, in the interest of justice, grants 'Special Leave' to the Petitioner/Appellant and accordingly, the Criminal Original Petition is allowed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com