

**Gadhi Vs. Krishnaraja**

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**Court :** Chennai

**Decided On :** Sep-28-1999

**Reported in :** 2000CriLJ1590

**Judge :** A. Ramamurthi, J.

**Acts :** Code of Criminal Procedure (CrPC) - Sections 100, 199 and 200

**Appeal No. :** Crl. R. Case No. 1029 of 1999

**Appellant :** Gadhi

**Respondent :** Krishnaraja

**Advocate for Pet/Ap. :** V. Krishnamurthy, Adv.

**Disposition :** Petition dismissed

**Judgement :**

ORDER

**A. Ramamurthi, J.**

1. Petitioner/accused in O.S. 15/1994 on the file of learned Judicial Magistrate I, Koilpatti, has preferred the revision aggrieved against the dismissal of appeal in C.A. 11/97 on the file of learned Sessions Judge, Tuticorin, confirming the conviction and sentence imposed by the Court below.

2. The case in brief for the disposal of the revision is as follows :-

The petitioner/accused filed a rent control petition 23/87 against one Nagarajan and the same was dismissed for default on 3-12-87. The petitioner filed petition No. 167/87 on 15-12-87 and also filed an affidavit, wherein he had stated that on 3-12-87 he was in Bombay; however, the said Nagarajan was able to prove that the petitioner was in Koilpatti itself on 3-12-87 since he had signed in a Muchilika before the Judicial Magistrate Court at Koilpatti. The said Nagarajan gave a complaint before the learned Magistrate that the petitioner has committed the offences under Sections 199 and 200 of the Code of Criminal Procedure (Penal Code) and the same was taken on file in O.C. No. 15/94. Three witnesses were examined and five documents were marked. After hearing both sides, the trial Court found that the petitioner was guilty under Sections 100 and 200 of the Code of Criminal Procedure (Penal Code) and sentenced him to pay a fine of Rs. 200/- under each count. The petitioner preferred C.A. 11/97 on the file of Principal Sessions Court, Tuticorin and the appeal was also dismissed, confirming the conviction and sentence imposed by the trial Court.

3. Heard the learned counsel for the petitioner/accused.

4. Learned counsel for the petitioner stated that the Courts below were not justified in finding him guilty under Sections 199 and 200 of the Code of Criminal Procedure (Penal Code). There is nothing in the affidavit to show that on 3-12-87 the petitioner has gone to Bombay. The evidence of D.W. 1 has also not been properly considered since he categorically stated that the affidavit was not read over to the petitioner and he had also not read over the same and affixed his signature. The evidence of P.W. 3 cannot be relied because of the enmity between him and the petitioner.

5. It is admitted that the petitioner/accused filed a rent control petition against P.W. 3 in O.P. 23/87 and the same came up for hearing on 3-12-87. Since the petitioner was absent on the said date, the petition was dismissed for default. However, the petitioner filed a petition No. 167/87 on 15-12-87 alleging that on 3-12-87 he was in Bombay and, as such, he could not appear before the Court. Ex.P.2 is the affidavit filed by the petitioner in support of his contention. P.W. 3 stated that on 3-

12-87 the petitioner has signed in the Muchilika before the learned Judicial Magistrate at Koilpatti and the Muchilika has been marked as Ex.P.3 in the case. It is, therefore, clear from Exs. P.2 and P.3 that the petitioner had signed in both these documents.

6. Learned counsel for the petitioner contended that it is not specifically stated in Ex.P.2 that he was in Bombay on 3-12-87. The petition was filed on 15-12-87, wherein it is specifically stated that since he was in Bombay and returned only two days back, he could not be present on 3-12-87. Similarly on 3-12-87 under Ex.P.3, the petitioner had also signed in the Muchilika before the learned Judicial Magistrate. No doubt, D.W. 1 and advocate clerk has been examined in support of the petitioner. His evidence is neither reliable nor trustworthy. According to him, the affidavit was not read over to the petitioner and the petitioner has also not read over the same; but his signature was taken. It is patently clear that when the petitioner is involved in a criminal offence, only to escape from that, D.W. 1 had been made to speak like that. When the document has been filed into the Court, now no oral evidence against the contents in the affidavit can be given by a party. The trial Court as well as the appellate Court rightly came to the conclusion that the petitioner has committed the offences under Sections 199 and 200 of the Code of Criminal Procedure (Penal Code) and only a fine has been imposed and it cannot be said that it is excessive. Hence, I find no reason to interfere in the conviction as well as sentences.

7. For the reasons stated above, the revision fails and is dismissed.

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