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Court : Chennai

Decided On : Feb-24-2012

Judge : P.R.Shivakumar, J.

Appeal No. : Crl.R.C.(MD)No.76 of 2012

Appellant : Nachayee

Respondent : The State Represented by the Inspector of Police

Advocate for Def. : Mrs.S.Prabha, Adv

Advocate for Pet/Ap. : Mr.T.Antony Arulraj, Adv

Judgement :

Criminal Revision Case is filed under Section 397 r/w 401 Cr.P.C praying to call for the records relating to the judgment dated 23.02.2011 in C.C.No.57 of 2010 on the file of Judicial Magistrate No.II, Kulithalai and set aside the same.

ORDER

1. Heard the submissions made by Mr.T.Antony Arulraj, learned counsel for the petitioner and Mrs.S.Prabha, learned Government Advocate (Criminal side) representing the first respondent (State) and Mr.N.Kannan, learned counsel for the respondents 2 and 3.

2.This criminal revision case has been listed today for admission. The de- facto complainant/injured, who has deposed in the trial court as PW1, has come forward with the present criminal revision case against the judgment of acquittal pronounced by the trial court on 23.02.2011 in C.C.No.57 of 2010 on the file of the learned Judicial Magistrate No.II, Kulithalai.

3.Based on the information furnished by PW1 under Ex.P1 statement, a case was registered on the file of Mayanoor Police station, Karur District as crime No.95 of 2010 on the file of the said police station for alleged offences under sections 294(b) and 324 IPC. For the registration of the said case, Ex.P4 First Information Report in the printed format was prepared. PW1 is said to have taken treatment for the injuries sustained by her in the alleged occurrence, for which Ex.P3 Wound Certificate was been issued by PW7, the Medical Officer. PW8 is the Investigating Officer, who conducted investigation, prepared Ex.P5 observation magazar and Ex.P6 rough sketch showing the topography of the alleged place of occurrence and after completion of investigation, submitted a final report alleging that the respondents 2 and 3 had committed the above said offences. The same was taken on file by the learned Judicial Magistrate No.II, Kulithalai as C.C.No.57 of 2010.

4.On appearance, charges were framed and the respondents 2 and 3/accused pleaded not guilty. After recording the said plea, a trial was conducted, in which eight witnesses were examined as PW1 to PW8 and actually five documents were marked as Exs.P1, P3 to P6 and the signature found in Ex.P6 alone was marked separately as Ex.P2. After the evidence of the prosecution was concluded, opportunity was given to the accused by questioning them under section 313(1)(b) Cr.P.C. No witness was examined and no document was produced on the side of the accused. No material object was produced on either side.

5.The learned Judicial Magistrate, heard the arguments advanced on both sides, considered the evidence in the light of the points urged in the arguments, upon such consideration, came to the conclusion that none of the charges against the accused (respondents 2 and 3 herein) stood proved and accordingly, pronounced a judgment acquitting both of them in respect of all the offences with which they stood charged. Assailing the said judgment, PW1 has chosen to prefer the present

criminal revision case on various grounds set out in the grounds of revision.

6.The learned counsel for the revision petitioner, during his argument, submitted that clear and categorical assertion of the injured witness (PW1), who happened to be the de-facto complainant, was not properly appreciated by the court below; that the evidence of PW7 also was not considered in proper perspective and that the learned Judicial Magistrate ought to have arrived at a conclusion that both the charges were proved, if at all the evidence was appreciated in proper perspective.

7.This court, after perusing the judgment of the trial court and also the testimonies of P.W.1 and P.W.7 and also the copy of the first information report marked as Ex.P4 (which have been included in the typed set of papers produced along with the revision) has no hesitation in coming to the conclusion that the said ground was raised only for the sake of raising a ground for filing a revision. The learned Judicial Magistrate has properly appreciated the evidence and pointed out the fact that the place of occurrence itself as deposed by PW1 differs from the place of occurrence mentioned in the first information report. The learned Judicial Magistrate has also pointed out various other discrepancies, which are as follows:-

i)Apart from the discrepancy regarding the place of occurrence, there is a discrepancy as to whether the complaint was given before going to the hospital or was obtained from PW1, while she was taking treatment in the hospital;

ii)There is a discrepancy regarding whether PW1 was proceeding towards her house and on her way, she was attacked or while she was in her residence, the accused used filthy words against her and drew her out of the house and attacked her.

8.In addition, the learned Judicial Magistrate has also adverted to the fact that all other alleged eye witnesses and the attestor of the magazar had betrayed the case of the prosecution and nothing useful to the prosecution could be elicited from them during cross examination made by the Assistant Public Prosecutor with the permission of the court. This court, upon perusing the judgment and the above said materials, does not find any defect or infirmity in the above said observations made by the learned Judicial Magistrate.

9.According to the complaint Ex.P1, PW1 went to the house of one Navamani and asked her to come to the house of PW1 to change the gas cylinder and when both of them were proceeding towards the house of PW1, near the house of the accused, both the accused abused them with filthy language and simultaneously the second accused (3rd respondent) attacked her on head with granite stone and caused a bleeding injury. It is pertinent to note that there is no averment in the complaint that 2nd respondent (A1) caused any injury. On the other hand, the allegation made against him is that he was proclaiming that he would beat PW1 with chappal. PW1, in her evidence, contrary to the averment found in the complaint, has stated that while she was in her house both the accused came to her house and abuse her with filthy language; that when she questioned the propriety of their act, the 3rd respondent/A-2 caused an injury on her left side forehead using a granite stone. As such, it is quite obvious that the place of occurrence as stated in the complaint, is not the same as the place of occurrence spoken to by PW1.

10.The prosecution case as revealed from Ex.P1 is that while PW1 was taking treatment in the hospital, police received intimation and Ex.P1 statement was recorded in the hospital, based on which Ex.P4 First Information Report was prepared. Per contra, PW1's evidence is to the effect that after the occurrence, she straightaway went to the police station gave a complaint and then went to the hospital for treatment. Even the evidence of PW7 shows inconsistency in the prosecution case. PW7 would state that it was who he admitted the PW1 in the hospital for treatment. But surprisingly his evidence and the wound certificate marked as Ex.P3 speak about the wound having been sutured before ever PW1 went to the Government hospital for treatment. It shows before going to the Government Hospital, PW1 had treatment at some other place, where in the wound sutured. Totally, there is no evidence regarding the said portion.

11.Further more, PW2 is none other than the husband of the PW1. Admittedly, he is not an eye witness and he came to the spot only after hearing about the occurrence. All other witnesses projected as eye witness have betrayed the prosecution and turned hostile. As rightly pointed out by the learned Judicial Magistrate, no answer useful to the prosecution was elicited during their cross

examination by the Assistant Public Prosecutor. The learned Judicial Magistrate, on a proper and meticulous evaluation of the evidence, came to a correct conclusion that the prosecution case is shrouded with suspicious circumstances of greater degree, since the sole eye witness who has spoken in favour of the prosecution cannot be believed and as she is not a reliable witness. The conclusion arrived at by the learned Judicial Magistrate that the case against the respondents 2 and 3/accused was not proved beyond reasonable doubt cannot be termed either defective or infirm, warranting any interference by this court in exercise of its revisional power. This court may even add that the nature of evidence adduced, in this case, is not even capable of proving the prosecution case by preponderance of probabilities. The criminal revision case does not even merit admission and the same deserves to be dismissed at the threshold.

12.Accordingly, the criminal revision case is dismissed. Consequently, connected Miscellaneous Petition is closed.

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