

(2010) 08 MAD CK 0074
In the Madras High Court
Case No : Criminal A. (MD) No. 25 of 2007

Viswanathan

APPELLANT

Vs

Sivasankar and Others

RESPONDENT

Date of Decision : 25-08-2010

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 204(2), 378(4)

Evidence Act, 1872 — Section 3

Penal Code, 1860 (IPC) — Section 147, 148, 379, 447, 506

Citation : (2010) 08 MAD CK 0074

Hon'ble Judges : C .S. Karnan, J

Bench : Single Bench

Advocate : M.P. Senthil, for the Appellant; M. Subash Babu, for the Respondent

Final Decision : Dismissed

Judgement

C .S. Karnan, J.—This Criminal Appeal filed u/s 378(4) of the Code of Criminal Procedure, filed against the order dated 13.09.2006

passed in C.C. No. 95 of 2004 on the file of the learned Judicial Magistrate No. III, Nagercoil, dismissing the case of the appellant for an alleged

offence u/s 148, 447, 379 and 506(ii) of I.P.C.

2. The following is the factual matrix of the appellant's case.

2.1. The appellant filed a private complaint against the respondents stating that on 22.11.2002 at about 06.00. p.m. the respondents entered into

the complainant's shop with a log stick and threatened the complainant that they would kill him. The 2nd respondent took a scissor from the shop

and threatened the complainant that he would kill him. The 2nd and 3rd respondents had fished the complainant on his face and on the rear of his

body and tugged the hair of the complainant and also used abusive language.

The 2nd respondent had taken Rs. 500/- forcibly from the complainant's pocket. The 3rd respondent took Rs. 3,000/- from the cash box lying in the shop, besides all the accused persons had taken away textile goods and fancy were worth about Rs. 20,000/-. Further all the respondents threatened the complainant for vacate the shop and deliver the vacant for him. Hence the complainant filed this complaint against the respondents in proper to punish them. They said complaint taken on file by the learned Judicial Magistrate, an alleged offence under Sections 147, 148, 447, 579 and 506(ii) of I.P.C.

3. The complainant was examined as P.W.1 and he had marked 15 documents to establish his case namely, (1) High Court order (2) Rental receipt (3) Electricity bill (4) Electricity card (5) Telegram complaint to the Sushintharam Police Station (6) Copy of the complainant sent to the SubInspector of the Police Station (7) Complaint to the District Collector (8) Telegraph copy to the Sub-Inspector (9) Telegram complaint to the District Superintendent of Police (10) Copy of the complaint sent to the Superintendent of Police (11) Rental agreement between the complainant and the accused" father (12) Interim order passed in O.S. No. 620 of 2002 (13) Complaint filed before the Judicial Magistrate No. III, (14) Photo copies and (15) Receipt of the Photographs.

4. The complainant, P.W.1 had adduced evidence that he is sub lessee under the father of the accused. After his death the 1st accused had received rent from him. All the accused had threatened the complainant for vacating in shop, so he filed an injunction suit in O.S. No. 620 of 2002, before the Additional District Munsif Court, Nagercoil. On 22.11.2002 at about 06.00 p.m. all the accused came with deadly weapons i.e., logs of wood and tress-passed into the complainant's shop and threatened the complainant that they would finish him off if he was not going to vacate and however the vacant portion. 2nd accused had taken a pine of Scissors from the shop and placing on the complainant's stomach threatening that he would insert the same in his stomach further he took Rs. 500/- from his pocket. The 3rd accused had taken Rs. 3000/- from the cash box.

All the six accused persons had taken fancy items and ready made garments worth about Rs. 20,000/- in an auto bearing Registration No. TN 74

C 3859.

5. P.W.1 further stated in his evidence that he had made several complaints to the various competent authorities but all were in vain. However, a

case was registered in Crime No. 762 of 2002, was not properly inquired and closed the case as mistake of fact.

6. The learned Counsel for the appellant argued that the complainant sent a Telegraph written complaint, the same was registered, in Crime No.

765 of 2002, subsequently the said case was closed as a mistake of fact. Aggrieved by this finding the complainant had filed the private complaint

against the accused person. Supporting his case, the complainant marked 15 documents, and given evidence. The learned Counsel further argued

that the complainant had produced photographs showing the places of occurrence. There was a Prima facie case, hence, the Police Officer

registered a case in Crime No. 765 of 2002. But without any reason the investigation officer closed the complaint. The learned Counsel further

argued that the happenings were witnessed by the neighbours.

7. The learned Counsel for the appellant relied upon a Judgment of this Court in *Munusamy v. Perumal Dhanalakshim @ Santhrabai* reported in

1997 (II) CTC 405.

Code of Criminal Procedure, 1973, Sections 200 and 204(2) -Taking cognizance of private complaint - Issue of summons to accused without list

of witnesses - Validity - Object of - Wording used in Section 204(2) would not mean that entire proceedings initiated is vitiated for want of list of

witnesses - Purpose is only to make accused to know about nature of accusation and details of witnesses who speak about accusation.

Interpretation of Statutes - Mandatory (or) directory - Word "shall" as employed in Section 204(2) is only directory - If object of provision of law

is otherwise satisfied without causing any prejudice to accused, word ""shall"" would only be directory.

Evidence Act, 1873, Section 3 - Appreciation of evidence - Standard of proof - Nature of evidence required in Criminal case - Quality of

evidence alone be criteria and not quantity of evidence.

8. The learned Counsel for the respondent argued that as per the evidence of the complainant, he had vacated the shop on 28.10.2002, but the

complaint made in 22.11.2002. There was no crystal clear evidence that the accused had committed any riot, and had taken garments, money etc.,

It is an admitted fact that there is Civil dispute in O.S. No. 666 of 2000 was pending on the file of the Civil Court between both the parties. With

malafide intention the complainant misconceived the case, as such the appeal is not justified and maintainable.

9. Considering the arguments of the learned Counsel for their respective parties, appeal grounds and judgment of the trial Court, this Court is of the

view that there is no independent witnesses in this case. Further, the learned Judicial Magistrate findings that the shop portion - 9 x 4 1/2 feet. So

seven accused persons cannot have passage or stay into the shop. This Court regards the findings of the learned Judicial Magistrate as fair. Hence,

this Court is of the view, that there is no need to interfere with the impugned order passed by the learned Judicial Magistrate No. III, Nagercoil, in

C.C. No. 95 of 2004 dated 13.09.2006, accordingly the Criminal Appeal is dismissed.