

(2011) 08 MAD CK 0268

Madras High Court

Case No: Criminal O.P. No. 10319 of 2011 and M.P. No. 1 of 2011

Gurunathan

APPELLANT

Vs

Kumaresan and Others

RESPONDENT

Date of Decision: Aug. 9, 2011**Acts Referred:**

- Criminal Procedure Code, 1973 (CrPC) - Section 397(1), 397(3), 482
- Penal Code, 1860 (IPC) - Section 147, 148, 294, 323, 325

Hon'ble Judges: T. Sudanthiram, J**Bench:** Single Bench**Advocate:** C. Prakasam, for the Appellant; M. Mohamed Riyaz, Government Advocate for R-6, for the Respondent**Final Decision:** Dismissed

Judgement

@JUDGMENTTAG-ORDER

T. Sudanthiram, J.

The Petitioner herein was examined as P.W.1 in C.C. No. 3 of 2006. The Respondents 1 to 5 herein were the accused facing charges for the offences under Sections 147, 148, 294(b), 323, 325 and 506(ii) I.P.C. The Respondents 1 to 5 were acquitted by the learned Judicial Magistrate, Kallakurichi. Against the said acquittal, the Petitioner herein had preferred a Criminal Revision Petition No. 28 of 2008 before the learned Additional District and Sessions Judge, Fast Track Court, Kallakurichi, and the same was dismissed by the learned Sessions Judge. Against the said order of dismissal, the Petitioner had preferred this criminal original petition before this Court.

2. The learned Counsel for the Petitioner submits that both the Courts below not appreciated the evidence of P.Ws.1 to 10 and acquitted the accused on the basis of minor contradictions in the evidence of witnesses.

3. This Court has considered the submissions made by the learned Counsel for the Petitioner and perused the records.

4. The Petitioner, who is the de facto complainant, had preferred a revision before the Sessions Court challenging the order of acquittal passed by the trial Court. A revision could be filed either before the Sessions Court or before the High Court as per Section 397(1) Code of Criminal Procedure which is as follows:

"397. Calling for records to exercise powers of revision.-(1) The High Court or any Sessions Judge may call for and examine the record of any proceeding before any inferior Criminal Court situate within its or his local jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding. Sentence or order, recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended, and if the accused is in confinement, that he be released on bail or on his own bond pending the examination of the record."

5. The Petitioner having already chosen to file the revision before the Sessions Court, challenging the order or finding or sentence, it is not permissible to the Petitioner to prefer further application before the High Court challenging the same, since it is barred u/s 397(3) Code of Criminal Procedure, which is as follows:

"397. (3) If an application under this section has been made by any person either to the High Court or to the Sessions Judge, No. further application by the same person shall be entertained by the other of them."

6. Ordinarily the application filed u/s 482 Code of Criminal Procedure amounts only to second revision. Even if mistake of fact or mistake of law is pointed out, the power u/s 482 Code of Criminal Procedure cannot be exercised unless it is shown that there is a grave miscarriage of justice.

7. Both the trial Court and the revisional Court have considered the evidence and passed the order of acquittal and there is No. miscarriage of justice. No. ground is made out to invoke the inherent powers of the High Court in this matter. Hence, this Criminal Original Petition is dismissed as not maintainable. onsequently, the connected miscellaneous petition is also ismished.