

A

M. DHANDAPANI

v.

R. MUTHU NALIAPPAN & ORS.
(Criminal Appeal Nos.453-54 of 2003)

B

OCTOBER 21, 2008

**[DR. ARIJIT PASAYAT, C.K. THAKKER AND
LOKESHWAR SINGH PANTA, JJ.]**

C

Code of Criminal Procedure, 1973; S.378(4):

D

Assault – Police allegedly assaulted a shopkeeper for opening the shop after the time fixed for closing – Complaint – Evidence of witness – Reliability – Trial Court, on the basis of evidence of witnesses, held that accusations were without any substance – Affirmed by High Court – Correctness of – Held: Correct, as complainant version lacks credibility/cogency.

E

Appellant, a shopkeeper, was allegedly assaulted by respondent, Police Officers, as he had opened the shop after the time fixed for its closing. Trial Court did not find evidence of witnesses sufficient to establish accusations. On appeal, High Court dismissed the appeal. Hence the present appeal.

F

Dismissing the appeal, the Court

G

HELD: 1.1. The trial Court, with reference to the evidence of witnesses, came to hold that the accusations were without substance and there was no material to show the alleged commission of offence. [Para 2] [41-G]

H

1.2. The High Court had indicated several reasons as to why the complainant version lacks credibility or cogency. Hence, no interference with the impugned order is called for. [Para 3] [42-B]

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal A
Nos. 453-454 of 2003.

From the final Judgment and Order dated 14.3.2002 of the
High Court of Judicature at Madras in C.A. No. 348 of 2002
and Crl.O.P. No. 5043 of 2002. B

B. Raghunath and S.R. Setia for the Appellant.

K.K. Mani, C.K.R. Lenin Sekar, Mayur R. Shah and S.
Srinivasan for the Respondents.

The Judgment of the Court was delivered by C

DR. ARIJIT PASAYAT, J. 1. Heard.

2. Challenge in this appeal is to the judgment of a learned
Single Judge of the Madras High Court dismissing the appeal D
under Section 378(4) of the Code of Criminal Procedure, 1973
(in short the 'Code'). The appeal was filed questioning the order
dated 20.12.2001 made in CC No. 85/2000 on the file of
Learned Munsif cum Judicial Magistrate, Kodumudi, Erode
District. The allegations were to the effect that on 18.2.1997 at E
about 9.45 P.M. accused persons took exception to the fact that
the complainant had kept his shop open after the time fixed for
closing the shop. The complainant was questioned by
respondent No. 1 as to why he had kept the shop open. The
complainant replied that the shop was kept open for the F
cleaning the utensils. This does not appear to have satisfied
respondent No. 1 who directed the other two accused persons
who were constables to put the accused in the jeep and
assaulted him. The trial court with reference to the evidence of
witnesses came to hold that the accusations were without G
substance and there was no material to show the alleged
commission of offence. Since the order was passed in a
complaint case, appeal was preferred by grant of leave. The
High Court referred to the various conclusions of the trial court
and hold that the accusations have not been established. H
Learned counsel for the appellant submitted that the High

A Court's conclusions are contrary to the evidence on record. The High Court has concluded about the contradictions based on the evidence of PW1 and PW2. It is pointed out that the conclusions are at variance with the evidence on records.

B 3. We have perused the records and after hearing learned counsel for the appellant we are satisfied that no interference is called for. The High Court has indicated several reasons as to why the complainant version lacks credibility or cogency.

C 4. That being the position, we find no merit in these appeals. The appeals are accordingly dismissed.

S.K.S.

Appeals dismissed.