

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 31-07-2007

CORAM:

THE HONOURABLE MR.JUSTICE A.C.ARUMUGAPERUMAL ADITYAN

CRIMINAL APPEAL No. 981 of 2001

N.Gopal

..Appellant/complainant

-vs-

Padmavathi

.. Respondent/accused

This appeal is filed against the Judgment passed in C.C.No.23 of 1994 dated 16.4.2001 on the file of Judicial Magistrate, Polur, Thiruvannamalai District.

For appellant :: Mr. R.G.Annamalai

For respondent :: Mr.P.M.Duraisamy

JUDGMENT

This appeal has been preferred against the Judgment in C.C.No.23 of 1994 on the file of Judicial Magistrate, Polur, Thiruvannamalai District. A private complaint under Section 200 of Cr.P.C. was filed by the complainant/appellant herein against the accused for an offence under Section 406 of IPC.

2. After recording the sworn statement of the complainant, the case was taken on file by the learned Judicial Magistrate, Polur, and on appearance of the accused on summons, copies under Section 207 of Cr.P.C. were furnished to the accused.

3 On the side of the complainant, P.Ws 1 to P.Ws 6 were examined and Exs P1 to P3 were marked.

3a) According to P.W.1, when she was working as a doctor in the Primary Health Centre in the Sattanur Dam, one Sneha Prabha had conducted a clinic at Polur and at that time, she had provided with wooden table, wooden chair and wooden bench in the clinic and since she could not conduct the clinic, she had closed the clinic and handed over the above said wooden furnitures to her and asked her to use the same. The value of the said furniture is about Rs. 1500/- and that the accused has joined

as a member of the staff in the year 1987 at Kazhambur in the primary health centre, who had received the said table, chair and bench handed over by Sneka Prabha and that the said wooden furniture's were sent to the house of the accused in a rickshaw owned by one Elumalai, who had delivered the said wooden furnitures at the quarters of the accused and when she(P.W.1) demanded the said wooden articles back in the year 1992, the accused had refused to return the same under some pretext or other which compelled her to issue a notice under the original of Ex P1.Ex P2 is the reply sent by the accused to her(P.W.1).

3b. P.W.2 would depose that the accused had worked under her at Polur as a nurse and that there is a separate register maintained for furniture articles in the primary health centre,Kazhambur and that when ever the wooden furnitures were supplied to the hospital, it will be entered in the stock register and only after getting necessary acknowledgement in the register, the wooden articles will be supplied and the accused had acknowledged in the register, after receiving the wooden articles from the primary health centre, Kazhambur.

3c. P.W.3 is the Doctor Ramalingam, who had worked as a doctor in the primary health centre , Kazhambur in the year 1992. He has also deposed to the fact that the wooden articles were supplied to the primary health centre by the Government and that one Sneka Prabha , the doctor was working as a doctor during the relevant period in Kazhambur Primary health centre.

3d. P.W.4 , Doctor Kandasamy would depose that there is an entry in the stock register maintained for the wooden articles at page 232 to the effect that a chair, a table, a stool, and a long bench were supplied to one Parvathi of Polur and no furnitures were handed over to the accused as per the entries in the stock register.

3e. P.W.5 is Elumalai, a Rickshaw Puller, who had deposed that at the relevant point of time, he had transported four wooden articles in his cycle rickshaw and delivered the same in the Nurses Quarters. But he has failed to identify the accused.

3f. P.W.6 is another nurse in the primary health centre. According to her, she knows both the complainant and the accused and that the wooden articles to the primary health centre at Polur were not supplied by the Government. But the same were supplied from the primary health centre,Kazhambur and out of the supplied wooden articles, the accused had given a bench to her(P.W.6) and that she had made necessary entries in the stock register for the return of the said bench by the accused. She does not know whether the said bench belonged to the Government or to the accused.

4. On the basis of the abovesaid evidence, the learned Judicial Magistrate had framed charge under Section 406 of IPC and when questioned the accused pleaded not guilty.

5. When incriminating circumstances were put to the accused under Section 313 Cr.P.C., he would deny his complicity with the crime. The accused has let in neither oral nor documentary evidence.

6. The learned Judicial Magistrate, after scanning the evidence both oral and documentary let in by the complainant, has come to a conclusion that there was no evidence to show that there was an entrustment of the wooden articles by the complainant to the accused to warrant conviction under Section 406 of IPC and accordingly dismissed the complaint thereby acquitting the accused, which necessitated the complainant to prefer this appeal before this court.

7. The point for determination in this appeal is whether the findings of the learned Judicial Magistrate, Polur in C.C.No.23 of 1994 is full of manifest error or perverse in nature to warrant any interference from this Court?

8. Heard Mr. R.G.Annamalai, learned Counsel appearing for the appellant. There is no one to represent the respondent, when the matter was taken up for hearing.

9. The Point:  
Even according to the complainant, the furnitures were handed over by one Sneka Prabha, who had conducted the clinic at Polur at the relevant point of time and that the said wooden furnitures handed over to the complainant by Sneka Prabha were entrusted with the accused at her request and that the same were transported through a cycle rickshaw, owned by P.W.5. Even P.W.5 Elumalai has not corroborated the evidence of the complainant to show that the said wooden furnitures viz., wooden chair, wooden table and wooden bench were handed over to the accused Padmavathi. He would say that he had left the wooden articles in the nurses quarters but he has not even identified the accused in the Court. Further P.W.6, a nurse in her evidence would depose that it was informed to her that one Gopal had handed over the table, chair and bench to the accused and the accused had returned one bench to her. Her evidence is to the effect that she does not know whether that bench belongs to the Government or not. The learned Judicial Magistrate had come to a conclusion that charge under Section 406 of IPC was not proved against the accused on the ground that there was absolutely no evidence for entrustment of the wooden articles by the complainant to the accused.

10. Even according to the complainant, the wooden articles do not belong to her but belonged to one Sneka Prabha, a doctor, who had conducted a private clinic at Polur and the same were handed over to her

at the time, when the said Dr. Sneha Prabha closed her clinic. But unfortunately, the said Sneha Prabha was not examined on the side of the complainant to show that the wooden articles connected with this case were handed over by Sneha Prabha to the complainant, who in turn, had handed over the same to the accused. Hence, I do not find any perverseness in the findings of the learned trial Judge to warrant interference from this Court. The point is answered accordingly.

11. In fine, the appeal is dismissed confirming the Judgment in C.C.No 23 of 1994 on the file of Judicial Magistrate, Polur.

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

sg

To

1. The Judicial Magistrate, Polur

2. -do- through the Chief Judicial Magistrate, Thiruvannamalai

1 cc To Mr.P.M.Duraiswamy, Advocate, SR.48109.

1 cc To Mr.R.G.Annamalai, Advocate, SR.47279.

Crl.A.No. 981/2001

JSK(CO)

RVL 07.08.2007

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