Crl. R.C. Nos. 604 & 608 of 2011 and Crl.O.P. No. 17428 of 2011

Sundari v. Sushila

2012 SCC OnLine Mad 1565 : (2012) 2 LW (Cri) 107

In the High Court of Madras
(BEFORE S. NAGAMUTHU, J.)

Crl.R.C. No. 604 of 2011

Smt. Sundari ..... Petitioner

*v.*

Smt. Sushila ..... Respondent

With

Crl.R.C. No. 608 of 2011

1. M. Kannan
2. Smt. Sundari
3. K. Senthil
4. T. Saraiah ..... Petitioners

*v.*

State Rep. By The Inspector of Police, V-4, Rajamangalam Police Station, Chennai 600049. [Crime No. 1513 of 2001] ..... Respondent

With

Crl.O.P. No. 17428 of 2011

K. Sushila ..... Petitioner

*v.*

1. M. Kannan
2. Smt. Sundari
3. K. Senthil
4. T. Saraiah
5. The State rep. By The Inspector of Police, V-4, Rajamangalam Police Station, Kolathur, Chennai 600099 ..... Respondents

For Petitioner in Crl.R.C. No. 604 of 2011 and petitioners in Crl.R.C. No. No. 608 of 2011 and respondents 1 to 4 in Crl.O.P. No. 17428 of 2011: Mr. P. Ram Manohar

For respondent in Crl.R.C. No. 604 of 2011 and petitioner in Crl.O.P. No. No. 17428 of 2011: Mr. S.N. Narasimhalu

For respondent in Crl.R.C. No. 608 of 2011 and 5th respondent in Crl.O.P. No. 17428 of 2011: Mr. C. Emalias, Government Advocate [Criminal Side]

Crl. R.C. Nos. 604 & 608 of 2011

And

Crl.O.P. No. 17428 of 2011

Decided on April 17, 2012

Memorandum of Grounds of Criminal Revision filed under Sections 397 r/w 401 of the Code of Criminal Procedure praying to call for the entire records relating to C.A. No. 124 of 2006 on the file of the learned Additional District and Sessions Judge, Fast Track Court No. IV, Chennai, and set aside the judgement dated 10.03.2011 passed

therein by the learned Additional District and Sessions Judge, Fast Track Court No. IV, Chennai, confirming the judgement dated 12.04.2006 made in C.C. No. 296 of 2002 passed by the learned X Metropolitan Magistrate, Egmore, Chennai.

Memorandum of Grounds of Criminal Revision filed under Sections 397 r/w 401 of the Code of Criminal Procedure praying to call for the entire records relating to C.A. No. 123 of 2006 on the file of the learned Additional District and Sessions Judge, Fast Track Court No. IV, Chennai, and set aside the judgement dated 10.03.2011 passed therein by the learned Additional District and Sessions Judge, Fast Track Court No. IV, Chennai, confirming the judgement dated 12.04.2006 made in C.C. No. 10344 of 2001 passed by the learned X Metropolitan Magistrate, Egmore, Chennai.

This Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the records pertaining to Crl.R.C. No. 134 of 2006 on the file of the learned Additional District and Sessions Judge, [Fast Track Court No. IV], Chennai and set aside the order dated 10.03.2011 passed thereon by the learned Additional District and Sessions Judge, [Fast Track Court No. IV], Chennai, dismissing the revision thereby refusing to enhance the sentence imposed on all the Accused in C.C. No. 10344 of 2001 and enhance the sentence imposed on all the accused to that of the one prescribed under law and to direct the 5th respondent to restore the vacant possession of the property bearing at Door No. 48 [Old No. 19], Rajamangalam Main Road, Villivakkam, Chennai-49, comprised in Survey No. 224/2B and 278/3, total extent of 2,146 sq.ft. To the petitioner from the accused A-1 to A-3 even by using force.

COMMON ORDER

The petitioners in Crl.R.C. No. 608 of 2011 are the Accused in C.C. No. 10344 of 2001 on the file of the X Metropolitan Magistrate, Egmore, Chennai. The trial court, by judgement dated 12.04.2006, convicted the petitioners 1 to 3 under Sections 448 & 427 of IPC and sentenced them to undergo simple imprisonment for six months for the offence under Section 448 of IPC; and to pay a fine of Rs. 1,000/- each in default to undergo simple imprisonment for three months for the offence under Section 427 of IPC and convicted the 4th petitioner under Section 448 r/w 109 and 427 r/w 109 of IPC and sentenced him to undergo simple imprisonment for six months for the offence under Section 448 r/w 109 of IPC; and to pay a fine of Rs. 1,000/- in default to undergo simple imprisonment for three months for the offence under Section 427 r/w 109 of IPC. Challenging the same, the petitioners filed an appeal in Crl.A. No. 123 of 2006. The learned Additional District and Sessions Judge [Fast Track Court No. IV], Chennai, by judgement dated 10.03.2011 dismissed the appeal thereby confirming the conviction and sentence imposed by the trial court. As against the same, the petitioners have come up with this criminal revision petition [Crl.R.C. No. 608 of 2011].

2. The facts of the case [C.C. No. 10344 of 2001] in brief are as follows:- The de facto complainant [P.W.1] in this case is one Mrs. K. Sushila. The property bearing D. No. 19, Rajamangalam Main Road, Villivakkam, Chennai, was brought for sale in E.P. No. 2389 of 1994 in O.S. No. 263 of 1991 on the file of the IX Assistant Judge, City Civil Court, Chennai. The de facto complainant was the successful bidder in the court auction. The sale was confirmed in her favour on 19.02.1998. Thereafter, in the proceedings in E.P. No. 461 of 2002 the learned IX Assistant Judge ordered delivery of vacant possession of the property to P.W.1. Accordingly, through court, the possession was delivered to the petitioner by the Court Amin on 10.09.2001. On taking possession, P.W.1 locked the building except two rooms which were occupied by two persons by name R. Vijayakumar and Mrs. Pushpavalli Jayakumar.

3. While so, according to the prosecution, during the night on 10.09.2001, the petitioners 1 to 3 with the help of the 4th petitioner broke open the lock and took

possession of the said property. At that time, the de facto complainant was not present. She came to know about the occurrence only on 13.09.2001. When she questioned A1 to A3, on 14.09.2001, they allegedly threatened her of dire consequences if she dared to question. Then she made a complaint to the Sub Inspector of Police, Rajamangalam Police Station on 14.09.2001 in respect of the said occurrences which took place on 10.09.2001 as well as on 14.09.2001. Based on the same, a case was registered in Crime 1513 of 2001 under Sections 170, 120-B, 307, 350, 357, 383, 405, 425, 427, 441, 442, 443, 444, 445, 503, 504, & 502 of IPC against the petitioners [A1 to A4]. During the course of investigation, the case was altered into one under Sections 427, 447, 448 and 506(ii) of IPC. On completing the investigation, the investigating officer filed a final report before the learned X Metropolitan Magistrate, Egmore, Chennai on 22.11.2001 against all the petitioners herein for offences under sections 448 and 427 of IPC alone. The learned Metropolitan Magistrate, in turn, took cognizance of the same in C.C. No. 10344 of 2001 [hereinafter referred to as "the police report case"].

4. While so, on 07.12.2001, the de facto complainant [P.W.1], Mrs. Sushila filed a private complaint before the very same Metropolitan Magistrate. In the complaint, the de facto complainant narrated about the occurrence on 10.09.2001 as well as on 14.09.2001. The learned Metropolitan Magistrate took cognizance of the same, recorded the statements of the complainant and two other witnesses on 07.01.2002. Taking cognizance in C.C. No. 296 of 2002 [hereinafter referred to as "the private complaint case"] for offence under Sections 120-B, 352 and 381 of IPC, the learned Metropolitan Magistrate issued summons to the accused. A1 to A3 in C.C. No. 10344 of 2001 are the accused in this private complaint and, accordingly, they appeared before the Court.

5. In the police report case in C.C. No. 10344 of 2001, on 24.10.2002, the learned Metropolitan Magistrate framed charges under sections 448 and 427 of IPC against the petitioners 1 to 3 and under Section 448 r/w 109 and 427 r/w 109 of IPC against the 4th petitioner. The petitioners denied the charges.

6. Thus, as stated supra, there were two cases one in C.C. No. 10344 of 2001 against the petitioners 1 to 4 herein for offences under Sections 448 & 427, 448 r/w 109 and 427 r/w 109 of IPC and the other case is by way of private complaint in C.C. No. 296 of 2002 against A1 to A3 for offences under Sections 120-B, 352 and 381 of IPC. In other words, A1 to A3 are common in both cases and A4 in the police report case is not an accused in the private complaint case. From the records, it could be seen that both the cases were posted throughout on the same dates of hearing.

7. In the police report case, in order to prove the charges, the prosecution examined as many as five witnesses as P.Ws.1 to 5. P.W.1 is the de facto complainant, who has spoken to about the possession of the property in question taken by her and to the fact that it was broke-open by these accused on 10.09.2001. She has also stated that on 14.09.2001, at 08.00 a.m. When she went to the property, she was intimidated by these accused. P.W.2 has spoken to about the fact that the possession was delivered by the Court Amin to P.W.1 to which he was a witness. P.W.2 has further stated that on 14.09.2001, he found the accused 1 to 3 in possession of the property in question. P.W.3 has also spoken to the fact that on 10.09.2001, he found all these accused breaking open the house and taking possession. It was he who informed P.W.1 about the occurrence. P.W.4 has turned hostile and he has not supported the prosecution in any manner. P.W.5 is the Sub Inspector of Police who registered the case, investigated the same and filed the final report. On the side of the prosecution as many as 24 documents were marked as Exs.P.1 to P.24. When the above incriminating materials were put to the accused under Section 313 of Cr.P.C. they denied the same as false.

8. In C.C. No. 296 of 2002 [private complaint case] on the side of the prosecution, the de facto complainant was examined as P.W.1 and as may as 26 documents were marked. The chief examination commenced on 10.03.2005 and the same was completed on 22.03.2005. For the purpose of cross examination, as revealed from the file, the case was adjourned to 26.04.2005. On that date practically there was no cross examination. Instead, the learned Metropolitan Magistrate recorded that the cross examination conducted in the police report case [C.C. NO. 10344 of 2001], where P.W.1 was examined, was treated as cross examination in C.C. No. 296 of 2002 also. Thereafter, the learned Metropolitan Magistrate has simply typed out in the deposition of P.W.1, the cross examination recorded in the police report case. After so typing out the cross examination, the learned Metropolitan Magistrate in the deposition of P.W.1 again recorded something as cross examination which indicates that P.W.1 was further cross examined. No other witness was thereafter examined in the private complaint case. Thereafter, on 29.03.2006, the learned Metropolitan Magistrate framed a single charge against all the three accused under Section 352 of IPC [an offence under section 352 of IPC is triable by following the procedure for trial of summons case]. On the same day [29.03.2006], the learned Metropolitan Magistrate examined the accused in the private complaint case under Section 313 of Cr.P.C.

9. On the same day, the learned Metropolitan Magistrate further ordered as follows: -

"Case is to be tried together with C.C. No. 10344 of 2001 as already ordered under Section 210(2) of Cr.P.C. on 28.02.2006. Arguments heard. Written Arguments filed by the complainant. Judgement by 04.04.2006".

Thereafter, on 04.04.2006, judgement was not pronounced and it was adjourned to 12.04.2006. On 12.04.2006, the learned Metropolitan Magistrate delivered a "common judgement" in respect of C.C. No. 10344 of 2001 and C.C. No. 296 of 2002. In C.C. No. 10344 of 2001 [police report case], the learned Metropolitan Magistrate convicted all the four accused viz., A1 to A4 in the police report case and sentenced them under various penal provisions of the Penal Code, 1860 as extracted in the first paragraph of this order.

10. So far as the case in C.C. No. 296 of 2002 [private complaint case] is concerned, the learned Metropolitan Magistrate convicted A2 [Mrs. Sundari] alone under section 352 of IPC and sentenced her to pay a fine of Rs. 250/- in default to undergo simple imprisonment for 15 days. Insofar as A1 and A3 are concerned, they were acquitted.

11. Challenging the said conviction and sentence imposed in police report case, A1 to A4 preferred an appeal in C.A. No. 123 of 2006 on the file of the learned Additional District and Sessions Judge [Fast Track Court No. IV], Chennai. Similarly, A2 in the private complaint case, preferred an appeal in C.A. No. 124 of 2006 on the file of the learned Additional District and Sessions Judge [Fast Track Court No. IV], Chennai.

12. The appellate court, however, did not deliver a common judgement. The appellate court dismissed both the appeals in Crl.A. Nos. 123 and 124 of 2006 by separate judgements dated 10.03.2011 thereby confirming the conviction and sentence imposed on the accused.

13. Before the learned Additional Sessions Judge, Fast Track Court No. IV, Chennai, the de facto complainant - Mrs. Sushila [P.W.1] filed a revision in Crl.R.C. No. 134 of 2006 seeking to enhance the sentence imposed on A1 to A4 in C.C. No. 10344 of 2001 [police report case] and for a direction to redeliver the vacant possession of the property bearing New No. 48 (old No. 19), Rajamangalam Main Road, Villivakkam, Chennai. The learned Additional Sessions Judge, by order dated 10.03.2011 dismissed the said revision also. As against the same, the de facto complaint Mrs. Sushila [P.W.1] has come up with Crl.O.P. No. 17428 of 2011.

14. In C.A. No. 124 of 2006, the respondent was the complainant Mrs. Sushila. Treating the same as an appeal arising out of a case instituted on a private complaint, the appellate court heard A2 - Mrs. Sundari and the complainant alone. The appellate court did not hear the learned Additional Public Prosecutor as the Inspector of Police, Rajamangalam Police Station, was not a respondent in the said appeal.

15. Since Crl.R.C. Nos. 604 and 608 of 2011 as well as Crl.O.P. No. 17428 of 2011 arise out of the common judgement delivered by the learned Metropolitan Magistrate, Egmore, Chennai in C.C. Nos. 10344 of 2001 and 296 of 2002, I have heard the learned counsel appearing for the petitioners/Accused learned counsel appearing for the de facto complaint/respondent and the learned Government Advocate, and I dispose of all the three proceedings by means of this common judgement.

16. The narration of the proceedings before the learned Metropolitan Magistrate, which I have made elaborately hereinbefore, would go a long way to show that all was not well with the learned Metropolitan Magistrate, who tried the cases. As a matter fact, I had to take enormous efforts to go through all the original records of the trial court to gather the above materials. It is really painful that the trial court had not acted diligently as expected of in law in conducting the trial and in the disposal of these cases. Number of irregularities and illegalities have been committed by learned Metropolitan Magistrate. The appellate court, on its part, also has committed similar irregularities and illegalities. Some of the irregularities committed are curable and the other irregularities/illegalities are incurable. Now, let me commence to discuss about the same one after the other.

17. Admittedly, the de facto complainant preferred the complaint to the police in respect of both occurrences which allegedly took place on 10.09.2001 and 14.09.2001 [vide FIR in Crime No. 1513 of 2001]. On completing the investigation, the Sub Inspector of Police [P.W.5] laid charge sheet on 27.11.2001 against A1 to A4 for offences under Sections 448 & 427 of IPC alone. The learned Magistrate framed charges against A1 to A4 on 24.10.2002 under Sections 448 and 427 against A1 to A3 and under Sections 448 and 427 r/w 109 of IPC against A4. The charges relate only to the occurrence dated 10.09.2001. There is no reference to the alleged occurrence which had taken place on 14.09.2001.

18. As I have already narrated, the de facto complainant-Mrs. Sushila preferred the private complaint on 07.12.2001 against A1 to A3. [Mr. T. Saraiah - The 4th Accused in C.C. No. 10344 of 2001 was not arrayed as accused in this case]. Here again, the allegations relate to both the alleged occurrences on 10.09.2001 and 14.09.2001. In the complaint, the de facto complainant had alleged that the offences punishable under Section 107, 124-B (sic), 307, 350, 383, 504, 425, 427, 441, 442, 443, 445, 503 and 506(ii) of IPC were committed. [Many of these provisions are not penal provisions]. The said private complaint was taken up for hearing by the learned Magistrate on 20.11.2001. On that date the learned Metropolitan Magistrate recorded that already there was a case in C.C. No. 10344 of 2001 in respect of the same occurrence upon which cognizance had been taken on 27.11.2001. Thereafter, he adjourned the private complaint. On 04.01.2002, the learned Magistrate recorded the statement of the de facto complainant and two other witnesses under Sections 200 and 201 of Cr.P.C. respectively. Having considered the above the learned Metropolitan Magistrate took cognizance on the said complaint on 07.01.2002 under Sections 120-B, 352 and 381 of IPC. The order of the learned Magistrate taking cognizance reads as follows:-

“Perused records, Sworn Statement of Witnesses. There is prima facie case to take the case on file. Already police filed charge sheet and case was taken on file u/s.448 & 427 of IPC only. Take the case on file u/s.120-B, 352, 381 IPC. Issue summons to Accused 1 to 3 by 07.02.2002”.

At this juncture, I am unable to understand as to how, the learned Metropolitan Magistrate could take cognizance of offence sunder Section 381 of IPC. Section 381 of IPC is an offence of theft committed by a clerk or servant in possession of the property of the master or employer. Here in this case the accused were neither clerks nor servants of any master or employer. Thus, the very taking cognizance of offence under Section 381 of IPC is baseless and the same is illegal.

19. Of course, since offence under Section 381 of IPC is triable as a warrant case, the learned Metropolitan Magistrate proceeded to try the private complaint as per the procedure provided in Chapter XIX-B [cases instituted otherwise than on police report]. During trial, P.W.1 [complainant] was examined on 10.03.2005 and again on 22.03.2005. She was not cross examined on the same day. On 26.04.2005, the learned counsel for the accused requested the Magistrate to treat the cross examination of the said witness in C.C. No. 10344 of 2001 as cross examination in this case also. Accepting the said plea, the learned Metropolitan Magistrate simply typed out the cross examination recorded in C.C. No. 10344 of 2001 in the deposition of P.W.1 in C.C. No. 296 of 2002 as cross examination. After reproducing the same, the learned Metropolitan Magistrate allowed the learned counsel for the accused to cross examine the witness further. Accordingly, further cross examination was done and it was completed on 26.04.2005. This procedure adopted by the learned Metropolitan Magistrate is again illegal. In law, the evidence recorded in one case cannot be simply adopted [typed out] as evidence in the other case. It is unfortunate that the learned Metropolitan Magistrate did not adhere to even this rudimentary law.

20. Subsequently, in the private complaint case, the learned Metropolitan Magistrate framed charge only for offence under Section 352 of IPC against A1 to A3. He did not find grounds to frame charge for offence under Section 120-B and 381 of IPC for which cognizance had earlier been taken.

21. The irregularity here is that the offence under Section 352 of IPC is not triable as a warrant case. The maximum punishment itself is only imprisonment for three months. It is beyond one's comprehension as to how the learned Metropolitan Magistrate thought it fit to frame a charge under Section 352 of IPC alone which is triable as a summons case. In this regard, I may refer to Sub-section (1) of Section 246 of Cr.P.C. which reads as follows:-

246. Procedure where accused is not discharged - (1) If, when such evidence has been taken, or at any previous stage of the case, the Magistrate is of opinion that there is ground for presuming that the accused has committed an offence triable under this Chapter, which such Magistrate is competent to try and which, in his opinion, could be adequately punished by him, he shall frame in writing a charge against the accused."

[Emphasis supplied]

22. Here, the expression "an offence triable under this Chapter" needs to be underlined. This makes it very clear that if only any one of the offences is triable under Chapter XIX-B of the Cr.P.C., then it would be appropriate for a Magistrate to frame charges.

23. Under Section 259 of the Cr.P.C., of course, it will be lawful for a Magistrate to conduct the trial by following the procedure in respect of case instituted otherwise than on police report under Chapter XIX-B of Cr.P.C. though the offences are triable as summons case by the Magistrate. Section 259 of Cr.P.C. reads as follows:-

259. Power of court to convert summons-cases into warrant cases - When in the course of the trial of a summon-case relating to an offence punishable with imprisonment for a term exceeding six months, it appears to the Magistrate that in the interests of justice, the offence should be tried in accordance with the procedure for the trial of warrant-cases, such Magistrate may proceed to re-hear the case in the

manner provided by this Code for the trial of warrant-cases and may recall any witness who may have been examined.

In order to invoke Section 259 of Cr.P.C., it is essential that the maximum punishment of imprisonment imposable should exceed six months. In the instant case, since the maximum punishment imprisonment imposable is only three months, Section 259 of Cr.P.C. is not applicable.

24. While conducting trial under Chapter XIX-B of Cr.P.C. in respect of case instituted otherwise than on police report, if the accused is not discharged under Section 245 of Cr.P.C. and further, if there is no offence which is triable under the said Chapter, what should be the procedure that should be followed has not been explicitly set out in Chapter XIX-B of Cr.P.C. At the same time, as I have already stated, the Magistrate cannot proceed further under Sections 247 to 250 of Cr.P.C. A full-fledged understanding of Chapter XIX-B of Cr.P.C. would make it abundantly clear that if once the Magistrate finds that there is no scope for framing charge under Section 246 of Cr.P.C. as the case is triable as summons case, then, the Magistrate should convert the case into one of a summons case and proceed further.

25. The material difference between Chapter XIX-B and XX of Cr.P.C., apart from framing of charges, is that in a warrant case, the accused has got right of cross examination of the prosecution witnesses at two stages namely, one prior to framing of charges and the other after the framing of charges. But, in summons case, the accused has got right of cross examination only once [i.e.,] after recording the plea of the accused. In a case where, as I have already narrated, if the trial had been conducted by following the warrant procedure during which the accused had first opportunity to cross examine the prosecution witnesses and if the same is converted as a summons case, the question is whether the accused would be entitled for cross examining the prosecution witnesses second time. The obvious answer is an emphatic no. But, one may contend that when the case was tried as a warrant case, since the accused was hopeful of having second chance to cross examine, some material facts would have been omitted to be elicited and it may also be argued that if such a second chance is not given to the accused simply because the case has been converted as a summons case, it may materially affect his defence. This apprehension has a definite basis. But, at the same time, the accused is not helpless. He can very well state the above reasons and may apply to the court under Section 311 of Cr.P.C. requesting the court to recall the said witnesses for the purpose of further cross examination. Since the right of the accused to cross examine the witnesses is tune with with fair trial to be afforded to him as guaranteed under The Constitution of India, the court will do well by recalling the said witness for the purpose of further cross examination. But, in the instant case, the Magistrate committed a serious irregularity in framing the charge under Section 352 of IPC and to continue to proceed with the trial further under Chapter XIX-B of Cr.P.C. However, this irregularity, in my considered opinion, will not vitiate the entire proceedings in view of Section 465 of Cr.P.C. The accused has not pleaded and placed any material to show that failure of justice has occasioned to her because of the above irregularity committed by the learned Magistrate. Therefore, on this ground the judgement of the trial court cannot be interfered with.

26. As we have noticed, the learned Metropolitan Magistrate had earlier passed an order under Section 210 of Cr.P.C. directing that the private complaint case shall be tried as though it was instituted on a police report. In my considered opinion, this order itself is not legal. First of all, the charges in the police case in C.C. No. 10344 of 2001 relate to the occurrence which had taken place on 10.09.2001, whereas, the charge in the private complaint case in C.C. No. 296 of 2002 relates to the occurrence on 14.09.2001. These two occurrences are not out of the same transaction. The accused are also different. In the police report case, there were four accused; whereas in the private complaint case, there were only three accused. Further, an order under

Section 210 of Cr.P.C. could be made before the commencement of trial. But, in this case, such an order was passed, only after examination of the prosecution witnesses and after questioning the accused under Section 313 of Cr.P.C. This is again illegal. Thus, the learned Magistrate ought not to have passed such an order to try the private complaint case as a police report case at all.

27. Proceeding further, if once such an order is made under Section 210 Cr.P.C. then, it is obvious that the complainant in the private case has no independent role to play. The burden of prosecuting the said case lies only on the Assistant Public Prosecutor, who is in charge of the police report case. But, in the instant case, the learned Magistrate allowed the case to be conducted by P.W.1 as though it still remains to be a private complaint case. This again is contrary to law.

28. The learned Magistrate while delivering judgement clubbed both the cases and has written a common judgement. [There is a docket order clubbing both the cases]. Section 210 of Cr.P.C. does not provide for clubbing of two cases. Here, trying two cases together should not be confused as though it means clubbing of the cases. Clubbing of these kinds of two cases is unknown to the Code of Criminal Procedure. Thus, the clubbing of the two cases itself is illegal.

29. Lastly, while writing the judgement the learned Magistrate has considered the evidence recorded in the police report case as evidence, in the private complaint case and vice versa. Admittedly, in the private complaint case, only one witness was examined. But, the learned Magistrate has discussed elaborately about all the five witnesses examined in the police report case, in the private complaint case to find A2 guilty. Similarly, the documents exhibited in one case were all extensively discussed in the other case. Thus, it is deplorable that learned Metropolitan Magistrate had made a complete mess.

30. Now coming to the judgements of the appellate court, the learned Additional Sessions Judge, on his part, was equally indifferent. First of all, when there is an order of the learned Magistrate treating the private complaint case as a police report case under Section 210 of Cr.P.C. in the appeal in Crl.A. No. 124 of 2006 arising out of C.C. No. 296 of 2002, the State should have been the respondent. But, in the said appeal, the State was not a respondent and, therefore, the learned Additional Sessions Judge did not hear the State at all. Instead, the complainant - Mrs. Sushila, who was the respondent, was heard. The learned Additional Sessions Judge dealt with both the appeals separately. But at the same time, the learned Additional Sessions Judge has also committed a very serious illegality inasmuch as while dealing with the appeal in respect of private complaint case., the learned Additional Sessions Judge has again dealt with the evidence recorded in the police report case to come to the conclusion that A2 in the private complaint is guilty of an offence under Section 352 of IPC. Similarly, in Crl.A. No. 123 of 2006, he has dealt with the evidence recorded in the private complaint case.

31. In view of the above illegalities, the judgements of both the learned Metropolitan Magistrate as well as the learned Additional Sessions Judge convicting A2 in the private complaint case for offence under Section 352 of IPC cannot be sustained. The evidence of P.W1, the sole witness examined, cannot be considered as a complete evidence since the said witness was not allowed to be cross examined by the defence. In normal course, the said case in C.C. No. 296 of 2002 should be remanded back to the learned Metropolitan Magistrate by setting aside the order passed under Section 210 of Cr.P.C. and to direct him to deal with the said case independently and to deliver a fresh judgement. But, I do not propose to do so for the simple reason that the offence under Section 352 of IPC is trivial in nature and the alleged occurrence in this case was of the year 2001.If the private complaint case is thus remanded back, I am sure, it will amount to serious violation of the right to

speedy trial which has been recognised as a fundamental right. Therefore, at this length of time, I do not propose to remand the said case. So, I am inclined to set aside the conviction and sentnece in the private complaint case [C.C. No. 296 of 2002] and to acquit A2 in the said case.

32. Now coming to the police report case in C.C. No. 10344 of 2001 too, I find illegalities committed by the Courts below by using the evidence recorded in private complaint case also in this case. In this case also, on the very same grounds, the conviction of the petitioners/A1 to A4 is liable to be set aside and the matter may require to be remanded back to the learned Metropolitan Magistrate for passing a fresh judgement by exclusively considering the evidences, both oral and documentary, recorded in the police report case. But, I do not propose to do the same also at this length of time. If this matter is remanded to the learned Magistrate, it will amount to another round of litigation impeding the right of speedy trial guaranteed under Article 21 of the Constitution of India. Therefore, I restrain myself from remanding the case back to the learned Metropolitan Magistrate as I have proposed to appreciate the evidences recorded in the police report case independently.

33. A perusal of the records would go to show that there is no dispute that the property in question bearing Door No. 19 was taken delivery by the Court Amin and the same was handed over to P.W.1. This fact is not disputed. The fact that it was kept under lock and key has been spoken to by P.W.1. Thereafter, on 14.09.2001, when P.W.1 went to the property she found the accused in the disputed property by breaking open the lock. This fact has been spoken to by P.Ws.1 to 4. P.W.2 has spoken to the fact that she saw A1 to A4 breaking open the lock and entering into the house. P.W.3 has spoken to about the possession of the house delivered to P.W.1. She has also spoken to about breaking open the lock by all the four accused and trespassing into the same. P.W.3 has spoken to about the occurrence on 14.09.2001. Since there is no charge regarding the said occurrence, the evidence of this witness is of no use, except to the limited extent that she has spoken to the fact that these accused were in possession of the property on 14.09.2001. P.W.4 has also spoken to the similar facts about the occurrence on 14.09.2001. She has also spoken to the fact that these accused were in possession of the property. Nothing material has been elicited from these two witnesses to disbelieve them in toto. During examination under Section 313 of Cr.P.C. the accused have made only a general denial and they have not taken any specific stand. But, D.W.1 who claims to be the tenant of a portion in a disputed property, even in chief examination, has stated that on 10.09.2001 the Court Amin took possession of the property bearing D. No. 19 and delivered possession to P.W.1. But, he has deposed that these accused did not break open the house which was delivered. Instead they are in possession of the neighbouring house bearing D. No. 20. D.W.2 has spoken to the fact that on 10.09.2001 she found the accused locking the house in question after delivery was taken. But, he has spoken to the fact that the accused are residing in D. No. 20 and they did not trespass into the house in question viz., D. No. 19/48. D.W.3 has also spoken to the fact that the accused were earlier in possession of the house bearing D. No. 19/48 delivered to P.W.1 and after delivery of possession P.W.1 kept it under lock and key. Thereafter, according to him, A1 was in possession of the property bearing D. No. 20 which was not delivered to P.W.1. According to these witnesses, the accused did not break open the house. D.W.4 is A4 - Saraiah. He has spoken to the fact that on 10.09.2001, he witnessed the house property bearing D. No. 19 delivered to P.W.1. He signed the delivery note as a witness. Thereafter, the accused were residing in D. No. 20 which is a neighbouring house. Thus, according to him, they did not break open the house bearing D. No. 19 at all.

34. From the above evidences, it is crystal clear that there is some dispute regarding the identity of the property. It is evident from the available evidence that

the house property bearing D. No. 19 was delivered to P.W.1 and the said fact is not disputed by the accused. After delivery was taken in the presence of D.W.4 from the accused, the accused moved to the house bearing D. No. 20 and they did not break open the house in question at all. Even before this court, the accused have filed an affidavit jointly wherein also they have stated that they are not in possession of the house bearing D. No. 19, Rajamangalam Main Road, Villivakkam, Chennai.

35. If the above evidences are appreciated carefully, it will emerge that there is only some dispute in respect of the identity of the property. The prosecution has not proved the fact that the house bearing D. No. 19 which was delivered to P.W.1 was broke open. The accused claimed that they are in possession of the house bearing D. No. 20. Admittedly, the house bearing D. No. 20 is not the subject mater of delivery of possession by the Court Amin. In such view of the matter, I have to hold that the prosecution has failed to prove the case beyond reasonable doubt and so, the accused are entitled for acquittal in the police report case also.

36. Now coming to Crl.O.P. No. 17428 of 2011, since this court acquits all the accused in the police report case, question of enhancement of sentence does not arise. Regarding delivery of possession also this court cannot pass any positive direction inasmuch as the accused have filed an affidavit before this court wherein the accused in paragraphs 3 and 4 have stated as follows:-

"3. We further submit that in the above circumstances, we jointly and severally confirm that we are not in possession as on date in the property which was delivered by Amin on two various dates to de facto complainant.

4. We further submit that we also undertake that we will not interfere or will make any encumbrance over the property in future. We further inform that entire building is attached property (sic) was demolished by de facto complainant and we petitioners 1 to 3 are living in Government Poramboke Land situated adjacent to the court attached property."

In view of the above, further direction cannot be given in this original petition.

37. Before parting with these cases, I want to go on record to express my displeasure over the way in which the learned Metropolitan Magistrate, who conducted the trial in both the cases in C.C. No. 10344 of 2001 and C.C. No. 296 of 2002 and the learned Additional Sessions Judge have conducted themselves in a cavalier manner without showing due diligence and by ignoring the fact that they have to uphold the rule of law by following the procedure established by law. In normal course, for this court, to go through the records and to deliver judgement, it would have taken only few hours. But, unfortunately, because of number of irregularities and illegalities committed by the courts below, this court had to spend number of days to repeatedly refer to the records which have not even been arranged in order. I am hopeful that this court will not come across any such lapse in the days to come.

38. In the result, both the Criminal Revision Petitions are allowed and the petitioners/Accused are acquitted of all charges. Criminal Original Petition No. 17428 of 2001 is dismissed accordingly. Bail bonds, if any executed by the petitioners/accused shall stand cancelled. Fine amount, if any, paid by the petitioners/accused shall be refunded to them.