

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.12.2018

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.7405 of 2017 and
CrI.M.P.Nos.5328 & 5329 of 2017

G.Logeswaran

... Petitioner

Versus

1.State represented by,
Inspector of Police,
All Women Police Station,
Vellore.

2.D.Bindhu

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.174 of 2010, on the file of Judicial Magistrate, Katpadi and quash the proceedings.

For Petitioner :Mr.V.Karthick, Senior Counsel for
Mr.T.S.Gopalan & Co.,

:Mr.M.Mohamed Riyaz
Additional Public Prosecutor for R1
Mr.S.Sathia Chandran for R2

O R D E R

This petition has been filed seeking to quash the proceedings in C.C.No.174 of 2010, pending on the file of the Judicial Magistrate, Katpadi.

2.Based on the complaint given by the defacto-complainant, an F.I.R came to be registered by the respondent Police for the offence under Section 292(a) and Section 506(i) of I.P.C and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998. The respondent Police investigated the case and final report came to be filed before the Court below and the same was taken cognizance for the offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 and Section 506(i) of I.P.C. The charges were also framed by

the Court below and the same has been put to challenge in this Criminal Original Petition.

3.The case of the prosecution is that the defacto-complainant had dispute with her husband Balaji and there was a Civil Suit pending between them. The 2nd respondent also gave an complaint against the said Balaji for an offence under SC/ST Act and the same was pending in Special S.C.No.1 of 2009 before the learned Principal District and Sessions Judge, Vellore. The petitioner was a practising advocate in Vellore and he came in contact with the 2nd respondent and offered to help her in the pending cases. It is the further case of the prosecution is that the petitioner started putting pressure on the 2nd respondent to marry him and was sending threatening messages to her cellphone. It is also the further case of the prosecution that certain vulgar messages were also sent to the 2nd respondent by the petitioner.

4.The learned Senior Counsel for the petitioner would submit that a reading of the entire allegations made in the final report, even if it is taken as it is, will not constitute an offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998. In order to substantiate his arguments, the learned Senior Counsel relied upon the following Judgments:-

(1) I.Linga Bhaskar and others Versus The State through the Inspector of Police, Thoothukudi South Police Station, Thoothukudi and another, dated 05.06.2018, reported in 2018-2-L.W (Cr1.) 309.

(2) 1.Gouresh Mehra, 2.Susil Mehra Versus 1.The State rep. by the Sub Inspector of Police, Cyber Crime Cell, CCB Egmore, Chennai 2.Rajesh Arora, dated 25.10.2010.

(3) 1.M.Arunachalam 2.Deepa Versus The Inspector of Police, B-5 Police Station, Singanaillore, Coimbatore, dated 20.09.2018.

5.Therefore, the learned Senior Counsel would submit that the proceedings pending before the Court below is an abuse of process of Court and the same requires interference by this Court under Section 482 of Cr.P.C.

6.The learned counsel appearing for the defacto-complainant would submit that the petitioner was continuously sending messages to the defacto-complainant's mobile phone to marry him and also was sending Vulgar messages to the defacto-complainant. The learned counsel would submit that Section 3 of the Tamil Nadu Prohibition of Harassment of Women Act has to be read along

with the Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act and therefore even if the messages were sent to her mobile phone, the same will constitute an offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act.

7. In this case, even though the final report was filed for an alleged offence under Section 506(i) I.P.C and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, the charges came to be framed against the petitioner only for an offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act. Therefore, this Court has to see as to whether on the basis of the allegations made in the final report, an offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act has been made out. In order to substantiate his arguments, the learned counsel for the defacto-complainant relied upon the Judgment of this Court in Basheer Ahamed and Others Versus State, Rep. by the Inspector of Police, W13, All Women Police Station, Washermenpet Circle, Chennai-21 reported in 2006(4) CTC 374.

8. For this purpose, it will be relevant to rely upon the Judgment cited by the learned Senior Counsel representing the petitioner. The first Judgment relied upon is Gouresh Mehra and others Versus The State rep. by the Sub Inspector of Police, Cyber Crime Cell, CCB Egmore, Chennai and others, dated 25.10.2010. The relevant portion of the Judgment is extracted here under:-

'5. At the outset, it is to be informed that the Tamil Nadu Prohibition of Harassment of Women Act would not be applicable in the present case. The Act defines harassment as follows :

' "harassment means any indecent conduct or act by a man which causes or is likely to cause intimidation, fear, shame or embarrassment, including abusing or causing hurt or nuisance or assault or use of force. Thus, the offending e-mails would amount to acts of harassment within the definition of the word in the Act. The definition is gender specific. Harassment under the act only can be committed by a man. But, it is noticed that the harassment suffered in the case is within the confines of the home/place, wherein a computer is housed. The accusation against the petitioners is u/s. 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998. Section 4 reads as follows:

'4. Penalty for harassment of woman. -- Whoever commits or participates in or abets harassment of

woman in or within the precincts of any educational institution, temple or other place of worship, bus stop, road, railway station, cinema theatre, park, beach, place of festival, public service vehicle or vessel or any other place shall be punished with imprisonment for a term which may extend to three years and with fine which shall not be less than ten thousand rupees.' [emphasis supplied].

6. This court is of the considered opinion that the words 'any other place' found in Section 4 are to be read 'ejusdem generis'. The Tamil Nadu Prohibition of Harassment of Women Act, 1998 when originally enacted consisted of 10 sections and came into force on 30.07.1998. The offences u/s.4-A Harassment death, 4-B Harassment suicide and 4-C Presumption as to harassment death and abetment of harassment suicide have been included under subsequent amendments of the year 2002. Confining ourselves to the offence contemplated u/s. 4 and looking into the objects and reasons of the enactment not towards informing ourselves of the amplitude of the Act but towards understanding the idea behind it, we find that the enactment was intended as a measure to eradicate eve teasing in public places. The Act informs what would constitute harassment in general terms in Section 3 and while prescribing a penalty for harassment under section 4 restricts the same to harassment committed at particular places. Proceeding further, we find that u/s. 5 & 6, responsibilities are cast upon persons in-charge of educational institutions, temple or other places of worship, cinema theatre or any other precinct and upon the crew of a public service vehicle or vessel. This Court considers it reasonable to hold that Section 4 of the Act was meant to deal with offences occurring in the places informed or in places of like nature. If not so read, the mention of the particular places in section 4 would be rendered redundant and such could not have been the legislative intent. To put it differently, if the intent was to attract punishment for harassment at any and every place, section 4 simply could have read as follows :

'4. Penalty for harassment of woman. -- Whoever commits or participates in or abets harassment of woman in any place shall be punished

9.The Second Judgment relied upon is Linga Bhaskar and others Versus The State through the Inspector of Police, Thoothukudi South Police Station, Thoothukudi and another, dated 05.06.2018 reported in 2018-2-L.W. (Crl.)309. The relevant portion of the Judgment is extracted here under:-

9.Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, reads as follows:

"Section 4: Penalty for harassment of woman: Whoever commits or participates in or abets harassment of woman in or within the precincts of any educational institution, temple or other place of worship, bus stop, road, railway station, cinema theatre, park, beach, place of festival, public service vehicle or vessel or any other place shall be punished with imprisonment for a term which may extend to three years and with fine which shall not be less than ten thousand rupees."

10.First of all, there should be harassment and such harassment should be within the places which are indicated in Section 4 of the Act. Harassment of women is defined under Section 2(a) of the Act. Harassment means any indecent act or by a man which causes or is likely to cause intimidation, fear, shame or embarrassment, including abusing or causing hurt or nuisance or assault or use of force. The Act is intended to punish person who does something in order to outrage women's modesty. In several decisions of the Hon'ble Supreme Court, harassment of women has been dealt with. The allegation is about the posting of an emoji in a whatsapp group shared by the group of persons. The posting of emoji is to express ones feeling. It is an act that may offend the second respondent but that is not an act attracting Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998.

10.The learned counsel for the 2nd respondent has relied upon the Judgment of this Court in Basheer Ahamed and Others Versus State, Rep. by the Inspector of Police, W13, All Women Police Station, Washermenpet Circle, Chennai-21 reported in 2006 (4) CTC 374. The relevant portion of the Judgment is extracted here under:-

7.Learned counsel for the petitioner referring to the phrase "or any other place" found in Section 4 of the Act, would submit that the said phrase will have to be read in consonance

with the places mentioned in the foregoing phrases in the Section. He also referred to the Judgment in State of Karnataka V.Kempaiah, 1998 CrL.L.J. 4070, wherein it has been held that the phrase "or in any other manner" found in the definition of Section 2(1) of Karnataka Lokayukta Act (1984) should be read to mean the same kind of things as thus specified in the very sane Section.

8. But in this case, it is found that Section 3 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 specifically prohibits the harassment of women at any place. The Preamble would also read that the harassment of women in any place in the State of Tamil Nadu is prohibited. When there is no specific punishment contemplated for the violation of Section 3 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998, the said Section will have to be read along with the Section 4 of the said Act which is the compendious Penal Provision. A conjoint reading of Section 3 and 4 of the said Act would give the meaning that "at any place" means wherever the occurrence had taken place. If separate punishment has been contemplated for the offence under Section 3 of the said Act, then as rightly pointed out by the learned counsel for the petitioner, "or any other place" found in Section 4 of would mean one of the places as adumbrated therein. But here, if we read conjointly both the aforesaid Sections, it will cover the occurrence wherever it takes place.

11. Even though Section 3 of the Tamil Nadu Prohibition of Harassment of Women Act states that harassment of Women at any place is prohibited, while providing the penalty for harassment of women, it is specifically restricted to particular places where the harassment has to take place. If Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act is to be read in the manner indicated by the learned counsel for the 2nd respondent, there was no need for defining the place, in the said provision and the provision itself would have said "Any Place". The whole purport of the Act is that the harassment should not happen in a public place. This Court is therefore in complete agreement with the submissions made by the learned Senior counsel in this regard.

12. The alleged incident has taken place in the year 2009 and the final report was filed in the year 2010. The proceedings have been pending for the last eight years without

any progress. Going by the allegations made in the final report, no useful purpose will be served by keeping the proceedings pending.

13.The Judgements that have been cited by the learned Senior Counsel appearing on behalf of the petitioner will squarely cover the facts of this case. Admittedly in this case the requirements of Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act have not been fulfilled. A message sent through a mobile phone will not attract the requirements of Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998.

14.In view of the above, the proceedings in C.C.No.174 of 2010, on the file of the Judicial Magistrate, Katpadi is hereby quashed. Accordingly, this Criminal Original Petition is Allowed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Principal District Sessions Judge,
Vellore.
- 2.The Judicial Magistrate Court,
Katpadi.
3. Do Thro The Chief Judicial Magistrate,
Vellore.
- 4.The Inspector of Police,
All Women Police Station,
Vellore.
- 5.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.SathiaChandran, Advocate, S.R.No.84296
+1cc to Mr.T.S.Gopalan & Co, Advocate, S.R.No.84324

Cr1.O.P.No.7405 of 2017

KK (CO)
GN(08/01/2019)