

**BAIL SLIP**

Senthilvel @ Senthil, S/o.Sudalaimadan, male aged about 42 years is released on Bail vide the order of this Court dated 10.10.2013 made in MP(MD)No.2 of 2013 in Crl.R.C(MD)13/2013.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 10.10.2018

CORAM:

THE HONOURABLE DR.JUSTICE **G.JAYACHANDRAN****Crl.R.C. (MD)No.13 of 2013**

Senthilvel @ Senthil

:Petitioner

Vs.

State represented by
The Inspector of Police,
Tiruchendur Police Station,
Tiruchendur,
Thoothukudi District.
(Crime No.81 of 2010)

:Respondent

PRAYER: Revision filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to call for the records and set aside the Judgment dated 09.10.2012 in Crl.A.No.47 of 2012 on the file of the II Additional Sessions Judge, Thoothukudi, modifying the conviction and sentence imposed upon the petitioner in C.C.No.261 of 2010 on the file of the learned Judicial Magistrate, Tiruchendur, dated 28.08.2012 and acquit the petitioner.

For Petitioner

: Mr.A.ThiruvadiKumar

For Respondent

: Mr.A.Robinson, G.A.(Crl.side)

ORDER

The revision petitioner herein is the accused tried for the offence under Section 4 of Tamil Nadu Prohibition of Women Harassment Act.

2.The de facto complainant, viz., Kala, is a deserted woman living separately. The revision petitioner herein, who is a distance relative of the de facto complainant, had proposed her for live in relationship, which has been repealed by her. However, with a wrong intention, he had frequently harassed her and also offered indecent proposals.



3. On 18.01.2010, at about 05.00 p.m., while the defacto complainant and her aunty were standing near Murugankurichi bus stop, it is alleged that the revision petitioner made some comment, which has caused mental agony to the defacto complainant. Hence, she lodged a complaint before the Thiruchendur Police Station. The said complaint has been taken on file in C.C.No.81 of 2010. After investigation, the respondent Police has filed a final report. To prove charge, the prosecution has examined six witnesses and marked six exhibits.

4. The defacto complainant, who is the victim, has spoken about the harassment and the incident as found in the complaint. Her mother was examined as P.W.2, who is not a witness to the occurrence, but heard about the occurrence. P.W.2, Palkani, who according to the defacto complainant was present at the time of occurrence, has turned hostile. Other two witnesses P.Ws.4 & 5, who are villagers, have not supported the case of the prosecution.

5. The trial Court, however, relying upon the deposition of the victim as reliable and genuine, found that the accused was guilty and convicted him to undergo two years R.I and to pay a fine of Rs.10,000/- i/d six months S.I. under Section 4 of Tamil Nadu Prohibition of Harassment Act.

6. Aggrieved by the same, the defacto complainant has preferred an appeal before the II Additional Sessions Judge, Thoothukudi. The learned Appellate Court, after considering the material evidence and the submissions made by the accused, confirmed the conviction and modified the sentence to that effect that he shall undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.10,000/-. The present Revision Petition is directed against the said modified judgment of the Appellate Court.

7. The learned counsel appearing for the petitioner would submit that P.W.1 is an interested witness, she and her family members had some money transaction with the accused. Pursuant to the quarrel in re-payment, a false complaint has been lodged by the P.W.1 and the same was supported by P.W.2, who is the mother of the defacto complainant. Even though an eye witness to the incident, who is none other than the maternal aunt of P.W.1, has not supported the case of the P.W.1, which would go to show that the complaint has been the shoot out of money dispute and really there is no harassment to the P.W.1. The learned counsel would point out certain portion of the deposition made by P.Ws.1 and 2 wherein, it is stated on behalf of the accused that the accused and the defacto complainant's family had money transaction.

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8. Further, the learned Government Advocate (Crl.side) submitted that the victim girl had deposed about the manner in which the accused initially behaved with her and later stated



about the harassment. He also submitted that parties are being relatives and there is no necessity for P.W.1 to make void allegation against the accused. The Courts below have properly appreciated the evidence let in by the prosecution. P.W.1 is the reliable witness, who is the victim lady, had faced the harassment at the hands of the accused and she has come forward to protest the same. Therefore, the judgment of the Court below is liable to be confirmed.

9.The submissions of the respective counsels and the records are considered.

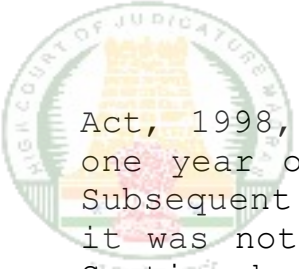
10.P.W.1 is a lady and she was deserted by her husband, so living along with her mother. The accused is not only a known person to the victim but also her relative. Taking advantage of her single status, he has tried to harass her sexually. This fact has been clearly stated by P.W.1. As far as the incident, which alleged to have been happened on 18.01.2010 at about 05.00 p.m., near Murugankurichi bus stand is concerned, P.W.3, who said to have present at the scene of occurrence, witnessed the incident, had turned hostile.

11.Though the place of occurrence is near bus stand and admittedly the said place is a crowded place, the prosecution was not able to get in any other witness to support the case of the P.W.1. In fact P.Ws.3 to 5 have turned hostile. However, the credibility of P.W.1 evidence is un-impeached. The verbatim word used by the accused could not be repeated by P.W.1 in the witness box. This cannot be taken advantage by the accused. The unparliamentary word used by the accused, may not be worthy to repeat. The witnesses might have felt embarrassed to repeat those words in the Court, since it will offend her modesty. Therefore, she might have used alternative words, which convey the same meaning. But the facts remains that P.W.1 has spoken about the abusive and indecent proposal made by the accused. While the evidence of the victim has inspired the confidence of the Court, there is no bar in convicting the accused. It is not the quantity of the witnesses, but quality of witnesses matters. In this case, the quality of P.W.1 deposition is highly reliable and no corroboration required. In such circumstances, this Court is not inclined to interfere with the conviction against the revision petitioner.

12.The learned counsel appearing for the petitioner would submit that the alleged incident took place in the year 2010. The parties being relatives have buried their hatred and living amicably and therefore, instead of sending the accused to imprisonment, he is ready to pay compensation to the victim.

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13.The occurrence has taken place on 18.01.2010 and at that time Section 4 of Tamil Nadu Prohibition of Harassment of Women



Act, 1998, prescribed imprisonment for a term which may extend to one year or with fine, which shall not be less than Rs.10,000/-. Subsequent to the amendment to the said Act, by Act No.39 of 2002, it was notified in the Gazette on 11th November 2002 that the said Section has been amended to the effect that the imprisonment for a term which may extend to three years and with fine, which shall not be less than ten thousand rupees. Since the offence has been committed prior to the amendment, this Court is of the opinion that while confirming the conviction the sentence imposed shall be modified as below:

Trial Court	Appellate Court	High Court
2 years R.I. + Fine of Rs.10,000/- i/d 6 months S.I.	6 months R.I. + Fine of Rs.10,000/- i/d 6 months S.I.	Fine of Rs.20,000/- which shall be paid as compensation to the victim under Section 357 Cr.P.C.

The sentence imposed by the trial Court and modified by the Appellate Court is further modified to the effect fine of Rs.20,000/- which shall be paid to the victim P.W.1. by the petitioner / accused as compensation. The fine amount of Rs.10,000/- which already collected from the accused shall be permitted to be withdrawn by P.W.1. The balance fine amount of Rs.10,000/- to be paid within a period of 45 days by the accused from the date of receipt of a copy of this order which shall paid to the victim as compensation.

14. In the result, this Criminal Original Petition is partly allowed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The II Additional Sessions Judge,
Thoothukudi.
2. The Judicial Magistrate,
Tiruchendur.
3. The Chief Judicial Magistrate, Tuticorin.
4. The Inspector of Police,
Tiruchendur Police Station,
Tiruchendur,
Thoothukudi District.



5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to

The Section Officer, (2 copies)
Criminal Section,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.A.ThiruvadiKumar, Advocate Sr.No.89748

GNS

VB/PM/SAR3/19.11.2018/5P/9C

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10.10.2018