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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 28.06.2019

Pronounced on : 12.07.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.3392 of 2013 and
Crl.M.P.No.1 of 2013

Sathiya Mullar ... Petitioner/Accused

Vs.

1.State rep by its,
The Inspector of Police,
W-19 All Women Police Station,
Adayar,
Chennai.
(Crime No.11 of 2010).

2.P.Shalat Yepsiba ... Respondents/Complainant,
Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the proceedings in C.C.No.5824 of 2011 on the file of the IX Metropolitan Magistrate, Saidapet and quash the same.

For Petitioner : Mr.M.Gnanasekar

For R1 : M/s.S.Thankira
Government Advocate [Crl. Side]

For R2 : Mr.R.Sathishkumar
Legal Aid Counsel

ORDER

The petitioner is the sole accused in C.C.No.5824 of 2011 facing trial before the learned IX Metropolitan Magistrate, Saidapet for the offence under Sections 509 of IPC and Section 4 of the Tamil Nadu Prohibition of Women Harassment Act, 1998 has filed this quash petition.

2.The gist of the case is that the 2nd respondent was working as a Teacher in Advent Christian Middle School, Thiruvannamiyur. The petitioner was the Head Master in the same



school, he used to call the 2nd respondent often to his room on one pretext or other he would touch her. On one such occasion, the petitioner asked her to take books from bureau, when she was taking the books, he embraced her from the back. When the 2nd respondent attempted to give complaint to the police, the petitioner stopped her and also requested her not to inform anything to her husband. On 18.09.2009, the petitioner indulged in similar activities, due to which the 2nd respondent got mental agony and she did not continue to work. After ten months, the petitioner sent a messenger to the 2nd respondent informing her that the Education Department Officer wants to handover her certificates. On 20.09.2010 the 2nd respondent went to the school. The petitioner informed that he sent such a message since her absence has put to him mental sufferings and he gave two letters inscribing his feelings and love towards the 2nd respondent. Hence, the 2nd respondent gave a complaint to the respondent Police.

3.The 2nd respondent had earlier appeared through her counsel D.Anbarasan and thereafter there was no representation on her behalf. Hence, this Court by order dated 13.06.2019 has appointed one Mr.Sathishkumar as legal aid counsel for the 2nd respondent.

4.The contention of the learned counsel for the petitioner is that the petitioner was working as a Head Master in Advent Christian Middle School, Thiruvannamiyur and has put fifteen years of service. During his service, he has not received any memo or disciplinary proceedings and there was no criminal case against him. The 2nd respondent was working as a teacher in the same school and she did not possess the required educational qualification to take class for the student and as such the 2nd respondent was terminated from the service by school authority.

5.He would further contended that on 23.10.2010, the 2nd respondent gave false complaint to the school Administrative officer alleging that the petitioner outraged her modesty. In the enquiry the administration found the complaint of the 2nd respondent false and closed the same. Thereafter, she lodged a false complaint before the J-3 Police Station Guindy with the same allegation. On receipt of the same, the J-3 Police Station, Guindy forwarded the complaint to 1st respondent. The 1st respondent without conducting proper enquiry registered an F.I.R in Crime No.11 of 2010 for an alleged offence under Section 509 of IPC and Section 4 of Tamil Nadu Prohibition of Women Harassment Act, 1998. On completion of the investigation and on the basis of the materials collected, the 1st respondent filed charge sheet before the learned IX Metropolitan Magistrate, Saidapet and assigned as C.C.No.5824 of 2011.



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6.The learned counsel for the petitioner has filed a typed set of papers containing letters asking the 2nd respondent's educational credentials, communication between the school management and the education department, letter to the 2nd respondent for submitting false certificates, due to which the school management stopped payment of salary and directed her to repay the salary and her explanation to the management be that as it may.

7.The learned Government Advocate [Cr1. Side] appearing for the 1st respondent would submit that on receipt of the complaint from the 2nd respondent, F.I.R in Crime No.11 of 2010 was registered for the offence under Section 509 of IPC and Section 4 of Tamil Nadu Prohibition of Women Harassment Act, 1998. On completion of the investigation and on the basis of the materials collected, the 1st respondent filed charge sheet before the learned IX Metropolitan Magistrate, Saidapet enlisting LW1 to LW7 and documents, the trial Court on scrutinizing the charge sheet, has taken the same on file and assigned C.C.No.5824 of 2011. In this case LW1 was examined on 16.10.2012. During February 2013 the petitioner has filed this quash petition.

8.The learned Government Advocate further submitted that in the quash petition, the petitioner did not mention the commencement of trial and it is midway, further there are enough materials against the petitioner. Due to the pendency of the quash petition, the trial Court could not be progressed and the case has been pending trial from the year 2011 for the past eight years.

9.Mr.R.Sathish Kumar, learned counsel for the 2nd respondent would submit that the 2nd respondent joined Advent Christian Middle School, Thiruvannamiyur much earlier. At the time of joining, the management and the school authorities had verified her certificates and allowed her to work. The correspondent of the school is the petitioner's father and the management committee was in favour of the petitioner, The petitioner was making advances and showed gestures and harassed the 2nd respondent. Taking advantage of the dominant position, on 26.01.2009 an advancement was made by the petitioner which was resisted by the 2nd respondent and thereafter on 27.01.2009 the correspondent of the school directed the 2nd respondent to produce her certificates on or before 20.02.2009. On 18.03.2009 another advancement was made. Left with no other option, the 2nd respondent lodged a complaint on 20.03.2010. Despite the complaint, the advancement was continued by the petitioner.

10.Unable to withstand the harassment caused by the petitioner, the 2nd respondent again lodged a complaint before the 1st respondent Police. Based on the complaint, the 1st



respondent Police examined the witnesses LW1 to LW7, who spoke about the complaint of the 2nd respondent and the enquiry conducted by the school management.

11. The learned counsel for the 2nd respondent in support of his contention relied upon the following decisions:

i) R.P.Kapur Versus State of Punjab reported in 1960 AIR (SC) 866. The relevant portion of the Judgment is extracted here under:-

"..... In cases falling under this Category the allegations made against the accused person do constitute an offence alleged but there is either no legal evidence adduced in support of the case or evidence adduced clearly or manifestly fails to prove the charge. In dealing with this class of cases it is important to bear in mind the distinction between a case where there is no legal evidence or where there is evidence which is manifestly and clearly inconsistent with the accusation made and cases where there is legal evidence which on its appreciation may or may not support the accusation in question. In exercising its jurisdiction under Section 561-A the High Court would not embark upon an enquiry as to whether the evidence in question is reliable or not....."

ii) State of Andhra Pradesh Versus Goloconda Linga Swamy reported in 2004 (3) R.C.R. (Criminal) 831 had categorically held as regards malafide that "the allegation of mala fide against informant is no ground to quash FIR and the allegations of mala fide against the informant are of no consequence and cannot by itself be the basis for quashing the proceedings."

iii) M.M.Haries Versus State of Kerala reported in 2005(4) R.C.R (Criminal) 579. The relevant portion of the Judgment is extracted here under:-

"7. A reading of the title of Section 509 IPC itself shows that the section deals with an offence involving word, gesture or act which are intended to insult modesty of a woman. The offence under the said section will be attracted if a person intending to insult the modesty of a woman, utters any word, makes any sound or gesture, or exhibits any object, intending that such word or sound shall be heard, or that such gesture or object shall be seen by such woman, or intrudes upon the privacy of such woman. But, a question arises whether 'writing of letters' will constitute any of the acts stated in Section



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509 IPC. The act committed in this case is not uttering of words or making of any sound. It is doubtful whether it amounts to exhibiting any object or intruding into a woman's privacy also which are referred to in section 509 IPC.

8. Then the question is whether it will come within the expression 'making gesture' used in section 509 IPC. But, the word 'gesture' is ordinarily used to refer to making of body signs implying movement of the limbs etc. It is used to refer to body-language. But, writing of letters does not involve any body language and hence it may apparently appear that such act will not amount to 'making gesture' as referred to in section 509 IPC. But, what does the expression 'gesture' actually mean? Lord Denning, an English judge cautioned in Seaford Court Estates's case (vide 1949 2 All ER 155) that 'the English language is not an instrument of mathematical precision'. To an Indian judge, English is even more intrinsic being a foreign language. So, to understand the real meaning of an English word, I shall safely depend upon the dictionary first.

9. A reference to the dictionary is inevitable in this case because the word 'gesture' is not defined under the Indian Penal Code. The meaning of the word 'gesture' as per Concise Oxford Dictionary, eighth edition is, "a significant movement of a limb or the body; the use of such movements esp. to convey feeling or as a rhetorical device; an act to evoke a response or convey intention". As per Collins Cobuild 'English Dictionary for advanced learners' third edition, 'gesture' is "something that you say or do in order to express your attitude or intentions, often something that you know will not have much effect" As per Law Lexicon' the word 'gesture' means "a posture or movement of the body; an action expressive of the sentiment or passion of intended to show inclination or disposition."

10. It is thus clear from the above discussion that the word 'gesture' refers not merely to body signs. Though the word 'gesture' is ordinarily used to mean movement of the limbs or body to convey a person's feelings, it can also connote an act done by a person to convey his intentions. According to dictionary meaning, an act done by a person to express his attitude or intentions also is a 'gesture'. A person can express his attitude or convey his intentions in a number of ways. For example, by



speaking, giving, looking, writing etc., etc. In that sense of the word, a person can make a gesture by doing an act without involving any body signs."

iv) Amanullah and another Versus State of Bihar and others reported in (2016) 6 SCC 699. The relevant portion of the Judgment is extracted here under:-

"25.A careful reading of the material placed on record reveals that the learned CJM took cognizance of the offences alleged against the accused- persons after a perusal of case diary, chargesheet and other material placed before the court. The cognizance was taken, as a prima facie case was made out against the accused-persons. It is well settled that at the stage of taking cognizance, the court should not get into the merits of the case made out by the police, in the chargesheet filed by them, with a view to calculate the success rate of prosecution in that particular case. At this stage, the court's duty is limited to the extent of finding out whether from the material placed before it, offence alleged therein against the accused is made out or not with a view to proceed further with the case."

12.The points raised by the learned counsel for the petitioner for consideration is that the 2nd respondent has failed in English subject in Teacher Training Examination and she did not clear the same. Therefore, she is not eligible to continue her work as a teacher and terminated from the service. Due to the termination, she had got animosity against the petitioner and gave false complaint and implicated him as an accused in this case. Further the termination order has not been challenged by the 2nd respondent. Hence, the proceedings against the petitioner is nothing but to take vengeance.

13.Considering the rival submissions and on perusal of the materials, it is seen that after completion of the investigation the 1st respondent Police filed a charge sheet and the charges have been framed against the petitioner and the trial has been commenced and PW1, the defacto complainant has already been examined in this case.

14.At this stage, this Court has no jurisdiction to appreciate the evidence of the proceedings under Section 482 of Cr.P.C. Whether there are contradictions or inconsistencies in the statements of the witnesses is essentially an issue relating



to appreciation of evidence and the same can be gone into by the learned Magistrate during the trial when the entire evidence adduced by the parties and that stage is now being kept on hold.

15. This Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of its accusation would not be sustained. That is the function of the trial Judge.

16. In view of the above, this Court is not inclined to entertain this quash petition. Accordingly, this Criminal Original Petition is dismissed. It is made clear that the observations made herein are only for the disposal of the above petition. The trial Court is to decide the case independently on merits. Consequently, the connected miscellaneous petition is closed.

17. This Court appreciates Mr. R. Sathishkumar, appointed as legal aid counsel for the 2nd respondent in rendering his sincere efforts in this regard.

Sd/-
Assistant Registrar (CO)

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Sub Assistant Registrar

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To

1. The IX Metropolitan Magistrate Court,
Saidapet.
2. The Chief Metropolitan Magistrate, Egmore, Chennai-8
3. The Inspector of Police,
W-19 All Women Police Station,
Adayar, Chennai.
4. The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.3392 of 2013

NMI (CO)
GMY (13/08/2019)