

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 25.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.973 of 2012

Jayanthi

...Petitioner

-Vs-

1. Moorthy

2. State represented by

The Sub-Inspector of Police,
Kunnathur Police Station,
Kunnathur, Erode District.

(Crime No.66 of 2008)

...Respondents

Criminal Revision Petition filed under Section 397 read with Section 401 of Cr.P.C. to set aside the judgment dated 04.10.2011 passed in C.A.No.43 of 2011 by the learned Additional District and Sessions Judge, Additional District and Sessions Court (Fast Track Court No.I), Erode, reversing the judgment of conviction dated 16.03.2011 passed in C.C.No.200 of 2008 by the learned District Munsif-cum-Judicial Magistrate, Perundurai, and convict the first respondent/accused.

For Petitioner : Mr.S.Kaithamalai Kumaran

For Respondents: M/s.Ma.P.Thangavel for R1
No Appearance

: Mr.T.Shanmugarajeswaran,
Government Advocate (Crl.Side) for R2

O R D E R

This criminal revision case has been filed by the defacto complainant against the judgment of acquittal dated 04.10.2011 passed in C.A.No.43 of 2011 by the learned Additional District and Sessions Judge, Additional District and Sessions Court (Fast Track Court No.I), Erode, reversing the judgment of conviction dated 16.03.2011 passed in C.C.No.200 of 2008 by the learned District Munsif-cum-Judicial Magistrate, Perundurai

2 The second respondent police registered a case against the first respondent for the offence punishable under Section

341 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998, stating that the first respondent on the day of occurrence at about 11.00 a.m. when the petitioner/P.W.1 was returning to her home after finishing her work, the first respondent intercepted P.W.1 by pulling her hand and torn his jacket. After completing investigation, the second respondent police, laid a charge sheet, which was taken on file in C.C.No.200 of 2008 by the learned District Munsif-cum-Judicial Magistrate, Perundurai. The learned trial Judge, after trial, found the accused guilty and by judgment dated 16.03.2011, convicted and sentenced him to pay a fine of Rs.500/-, in default, to undergo simple imprisonment for a period of one week for the offence punishable under Section 341 of IPC and to undergo rigorous imprisonment for a period of six months and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for a period of three months for the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998. Challenging the said judgment of conviction, the first respondent has filed an appeal, which was taken on file in Criminal Appeal No.43 of 2011 by the learned Principal District and Sessions Judge, Erode and made over to the learned Additional District and Sessions Court (Fast Track Court No.1), Erode. The learned Additional District and Sessions Judge, after hearing both the counsel and after perusing the records, by judgment dated 04.10.2011 allowed the appeal and set aside the conviction and sentence recorded by the learned trial Judge. Aggrieved against the reversal judgment of acquittal, the defacto complainant has filed this criminal revision before this Court.

3 Learned counsel appearing for the revision petitioner would submit that the petitioner is defacto complainant and she was examined as P.W.1. She has stated that she has lodged complaint before the respondent police. P.W.2 is husband and P.W.5 is mother-in-law of the petitioner/P.W.1, P.Ws.3 & 4 are eye witnesses to the occurrence, P.W.6 is witness for Mahazar and P.W.7 is the Investigating Officer. The petitioner/P.W.1, being a victim, has categorically stated that the accused caught hold of her hands and torn her jacket. P.Ws.3 & 4 are eye witnesses to the occurrence and they have stated that they stood in the tea shop nearby the place of occurrence and they have seen the occurrence and when they went to the place, the first respondent ran away from the place. Even though, the learned Magistrate has rightly appreciated the evidence of the prosecution and convicted the first respondent, the lower appellate Court has erroneously acquitted the accused without any valid reason, which warrants serious interference of this Court.

4 There is no representation on behalf of the first respondent/accused. It is the defence of the first respondent/accused that there are contradictions between the evidence of prosecution witnesses and the same has disproved the case of the prosecution. It is stated that on the next day of occurrence, the police officials came and recovered the torn jacket, which is not believable, since no woman would keep the teared jacket, which itself creates doubts in the case of the prosecution.

5 The learned Government Advocate (Crl.Side) appearing for the second respondent would submit that in order to the prove the case of the prosecution, P.Ws.1 to 7 were examined and Exs.P1 to 6 were marked besides one material object and on the other hand, on the side of the defence no one was examined and no document was marked and prosecution has clearly proved its case though the witnesses.

6 Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the second respondent and perused the materials available on record.

7 It is seen that the petitioner lodged complaint before the second respondent police and she was examined as P.W.1 stating that due to previous enmity, the first respondent, committed the offence as alleged in the complaint. But, the fact remains that the petitioner/P.W.1 did not examine any witness to show that there is previous enmity between the parties. P.W.3 & 4, who are stated to be the eye witnesses to the occurrence, had given evidence, which is contrary to the evidence of P.W.1. Even the petitioner/P.W.1 had contradicts her own statement and there are contradictions in the complaint lodged by her and the statements given before the respondent police. The petitioner, being a victim, should have established her case by giving cogent evidence to sustain her case, which is absent in the present case. Even though, the trial Court has convicted the accused, the lower appellate Court, being a final Court of fact finding, after re-appreciating entire evidence on record independently, reversed the judgment of conviction and acquitted the accused.

8 This Court, while exercising revisional jurisdiction cannot revisit the entire evidence on record and substitute its own views on the findings given by the Courts below, unless there exists perversity. On reading of the evidence of P.Ws.1 to 5 and the judgment of the lower appellate Court, this Court does not find any perversity, warranting interference.

9 In the result, the criminal revision stands dismissed confirming the judgment of acquittal dated 04.10.2011 passed in C.A.No.43 of 2011 by the learned Additional District and Sessions Judge, Additional District and Sessions Court (Fast Track Court No.I), Erode. The trial Court is directed to refund the fine amount paid by the first respondent/ accused, if any.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. The Additional District and Sessions Judge, Additional District and Sessions Court (Fast Track Court No.I), Erode.
2. The District Munsif-cum-Judicial Magistrate, Perundurai.
3. The Additional Public Prosecutor, High Court of Madras.
The Sub-Inspector of Police, Kunnathur Police Station,
Kunnathur, Erode District.

+1 CC to Mr.Ma.P. Thangavel, Advocate sr 64369

+1 CC to Mr.A.K. Kumaraswamy, Advocate sr 64028.

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NRL (CO)
SP (27/11/2019)

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