

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 23.10.2019
CORAM:
THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA
Crl.RC.No.106 of 2016
and
Crl.M.P.No.15193 of 2019

K.Vijayan

... Revision petitioner/Accused

Vs.

1.State represented by
the Sub-Inspector of Police,
W-15, All Women Police Station,
Royapuram, Chennai - 600 013.

...1st Respondent/Complainant

2.P.Rita

... 2nd Respondent/
Defacto complainant

3.Vasanthi

... 3rd Respondent/Victim

[Respondents 2 & 3 are impleaded as per order of this Court in Crl.M.P.No.15191 of 2019 in Crl.R.C.No.106 of 2016, dated 23.10.2019]

PRAYER: The Criminal Revision Petition has been filed, under Sections 397 (1) & 401 of Cr.P.C, to set aside the Judgment of conviction and sentence of two years simple imprisonment and fine of Rs.5,000/- passed on the petitioner by the XVI Metropolitan Magistrate, Geroge Town, Chennai in C.C.No.2242 of 2014, dated 07.03.2014 and confirmed by the XVI Additional Sessions Judge, City Civil Court, Chennai in C.A.No. 58 of 2015, dated 08.12.2015 and call for records and acquit the petitioner from all the charges.

For Petitioner : Mr.H.Mohamed Ghouse
For R1 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor
For R2 & R3 : Mr.S.Malayappan

J U D G M E N T

The revision has been filed to set aside the Judgment of conviction and sentence passed on the petitioner by the XVI Metropolitan Magistrate, Geroge Town, Chennai in C.C.No.2242 of 2014, dated 07.03.2014 and confirmed by the XVI Additional Sessions Judge, City Civil Court, Chennai in C.A.No. 58 of 2015,

dated 08.12.2015, finding the petitioner guilty for the offences under Section 354 of IPC and sentencing him to undergo two years simple imprisonment and to pay a fine of Rs.5,000/-, in default, to undergo simple imprisonment for three months.

2 The case of the prosecution is as follows:

(a) The complainant viz., Rita(PW1) and her sister in law and her mentally ill health daughter Vasanthi (PW2) were residing at Periapalayathamman Koil Street, Tondiarpet, Chennai. Since the parents of the PW3 died, PW3 was living with PW1. On 03.02.2014, the complainant's mother-in-law had called the petitioner/accused, who is an electrician nearby, to attend the tube light, which was not burning. The petitioner/accused, who had come to the complainant's house to attend the electrical work, outraged the modesty of Vansanthi (PW3) by inappropriately pressing her breast. On the complaint given by the PW1, the respondent had registered a case in Crime No.03/2014 and filed the charge sheet for the offences under section 354 and 506 (ii) of IPC.

3 The Trial Court took cognizance of the complaint filed by the respondent for the offences under Sections 354 and 506 (II) of IPC. When the petitioner was questioned, he had denied the charges and sought to be tried. On the side of the prosecution PW1 to PW4 were examined and Exs.P1 to P3 were marked. Upon questioning under Section 313 of Cr.P.C., the petitioner/accused had denied the evidence against him. However, he has not examined any witness on the side of the defence and no documents were marked.

4 After hearing the learned counsel for both sides, the Trial Court had acquitted the petitioner/accused for the offence under section 506(ii) of IPC, however found him guilty for the offence under section 354 of IPC and convicted and sentenced him as stated above. As against the said conviction and sentence, the petitioner/accused had filed appeal in CA.No. 58 of 2015 before the learned XVI Additional Sessions Judge, City Civil Court, Chennai, who had dismissed the appeal by judgment dated 08.12.2015, confirming conviction and sentence of the Trial Court. As against the same, the present revision has been filed.

5 The learned counsel appearing for the petitioner would submit that the accused and PW1 & PW2 were living near to each other and that due to misunderstanding that arose between them, a complaint has been given against the petitioner. He would submit that even during the examination in Court, PW1 and PW2 have deposed that they have compromised the matter with the petitioner/accused. However, the Trial Court had convicted the petitioner and the conviction and sentence of the Trial Court

has been confirmed by the lower Appellate Court. He would also submit that PW3/neighbour has not supported the case of the prosecution.

6 The learned counsel appearing for the petitioner would submit that the petitioner has been charged and convicted for the offence under section 354 of IPC and the Trial Court as well as the Appellate Court have failed to take into consideration the evidence of PW1 and PW2, where they have stated that they have compromised the matter with the petitioner and that no further action may be taken as against the petitioner. He would further submit that the petitioner was tried for having committed offence under Section 354 of IPC and as per Section 320 (2) Cr.P.C. offence under Section 354 of IPC can be compounded by the person/victim with the permission of the Court before which, prosecution of such offence is pending.

7 He would submit that the witness PW1/Defacto complainant and the victim/PW2 have entered appearance and they have also filed a petition seeking for compounding the offence. He would further submit that the petitioner in view of the compromise and the victim having agreed to compound, has also offered to pay an amount of Rs.50,000/- to the victim girl as compensation. He would further submit that the petitioner has expressed his remorse and the defacto complainant and the victim have also pardoned him and compromised the matter and subsequent to the conviction he has not involved in any offences and that he is a married man, having one daughter, who is aged thirteen years and studying sixth standard and would pray that these facts may be taken as a mitigating factor to permit the parties to compound the offence.

8 The Defacto Complainant/PW1 and victim/PW2 have filed separate affidavits before this Court stating that subsequent to the incident, which has occurred in the year 2014, they are living peacefully in the same area and they have compromised the matter.

9 The learned counsel representing the defacto complainant and the victim would submit that taking into consideration the relationship between the families, PW1 and PW2 have agreed to compromise the matter with the petitioner even during pendency of trial. He would also submit that pursuant to the compromise, the petitioner has also paid an amount of Rs.50,000/- towards compensation to the victim girl and the victim girl has also accepted the same.

10 The Additional Public Prosecutor would submit that both the Courts have found the petitioner guilty for the offence under Section 354 of IPC and convicted him to undergo sentence

for a period of one year and to pay a fine of Rs.5,000/-. He would submit that the fine amount has been paid and the petitioner has suffered incarceration for eight days.

11 The petitioner has been convicted for the offences under section 354 of IPC and per Section 320(2) of Cr.P.C., the offence under Section 354 IPC can be compounded with the permission of the Court. Even during trial, PW1 and PW2 have stated that they are prepared to compromise the matter and that they have stated that no further action may be taken against the petitioner. However, the Trial Court as well as the Lower Appellate Court had not taken into consideration the evidence of PW1 and PW2 and have convicted the petitioner.

12 The petitioner has been found guilty and convicted for the offence under Section 354 IPC, in respect of an occurrence, which took place on 03.02.2014. As per Section 320(2) Cr.P.C., the offence under Section 354 IPC can be compounded by the woman assaulted or to whom the criminal force was used. Affidavit of the victim/witness taken on record. Now taking into consideration the above facts, the petition for compounding stands allowed.

13 In view of the above, this revision petition is allowed and the order passed by the XVI Metropolitan Magistrate, Geroge Town, Chennai in C.C.No.2242 of 2014, dated 07.03.2014 and confirmed by the XVI Additional Sessions Judge, City Civil Court, Chennai in C.A.No. 58 of 2015, dated 08.12.2015 is set aside. Consequently, connected Miscellaneous Petition is closed. Fine amount of Rs.5,000/- is directed to be returned to the accused. Bail bonds if any executed shall stand cancelled.

Sd/-

Assistant Registrar (CS-VI)

// True Copy//

Sub Assistant Registrar

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To

1.The Sub-Inspector of Police,
W-15, All Women Police Station,
Royapuram, Chennai - 600 013.

2.XVI Metropolitan Magistrate,
Geroge Town, Chennai.

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3.XVI Additional Sessions Judge,
City Civil Court, Chennai.

4.The Public Prosecutor,
High Court, Madras.

+lcc to Mr.H.Mohamed Ghouse, Advocate, SR.No.89119.

Crl.RC.No.106 of 2016
and
Crl.M.P.No.15193 of 2019

AD(CO)
CSR:11/02/2020



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