

Bail Slip

The Petitioner/Accused No.I, namely Kumar, S/o. Thangaiyan aged 32 years is directed to be released on bail as per order in Crl.M.P.No.1850/2016 in Crl.R.C.No.268 of 2016 dated 18.02.2016 on the file of this Hon'ble Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :22.11.2019

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.R.C.No.268 of 2016

and

CRL.M.P.No.1852 of 2016

Kumar

... Petitioner/A1

Vs.

State rep. by
The Inspector of Police (L & O),
Sirkazhi Police Station,
Nagapattinam District,
(Crime No.462 of 2007)

... Respondent/Complainant

PRAYER: This Criminal Revision Petition has been filed, under Sections 397 and 401 of Cr.P.C.,1973 seeking to set aside the judgment dated 08.01.2016 made in Crl.Appeal No.9 of 2011 on the file of the Sessions Judge, [Fast Track Mahila Court), Nagapattinam, in modifying the judgment dated 21.01.2011 made in C.C.No.170 of 2008 on the file of the Judicial Magistrate Court, Sirkazhi.

For Petitioner : Mr.C.Prabakaran

For Respondent : Mr.Mohammed Riyaz

Additional Public Prosecutor.

ORDER

1. This Criminal Revision Petition has been filed, seeking to set aside the judgment dated 08.01.2016 made in Crl.Appeal No.9 of 2011 on the file of the Sessions Judge, (Fast Track Mahila Court), Nagapattinam, in modifying the judgment dated 21.01.2011 made in C.C.No.170 of 2008 on the file of the Judicial Magistrate Court, Sirkazhi.

2. Brief facts of the case of the prosecution are that on 14.01.2008 at around 09.30 a.m., while P.W.1 was going along the road in front of the house of the petitioner, he had in order to outrage her modesty hugged her and kissed her and when it was

questioned by P.W.3 and P.W.4, Accused No.2 and Accused No.3 have assaulted them with the iron rod and also threatened them of dire consequences. After completion of investigation, the petitioner along with A2 & A3 were charged for the offences u/s. 294(b), 341, 342, 354, 323, 506(ii) of IPC and under section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1988. The trial court acquitted the second and third accused however, after analysing the evidence found the petitioner guilty for the offences under section 323 of I.P.C and under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act 1988 and convicted and sentenced him to undergo simple imprisonment for three months for offence under Section 323 of IPC and to undergo simple imprisonment for two years for offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act 1988 and to pay a fine of Rs.10,000/- and in default to undergo simple imprisonment for three months. On appeal, the appellate court partly allowed the Appeal by acquitting the petitioner for the offence u/s.323 of IPC, however convicted the petitioner for the offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act 1988 and modified the sentence to six months Simple Imprisonment. Against the conviction and sentence the present revision has been filed.

3. The Learned counsel for the petitioner would submit that though the petitioner was charged along with two other accused for the offences u/s. 294(b), 341, 342, 354, 323 and 506(Iii) of IPC and U/s. 4 of the Tamil Nadu Prohibition of Harassment of Women Act, the trial court disbelieving the witnesses, acquitted the second and third accused in respect of the above charges and also acquitted the petitioner in respect of the charge u/s.294(b), 342, 354 and 506(ii) and found the petitioner guilty for the offence u/s.323 r/w section 4 of the Tamil Nadu Prohibition of Harassment of Women Act. Further he would submit that on appeal, the appellate court partly allowed the appeal and acquitted the petitioner insofar as the offence u/s.323 of IPC and found the petitioner guilty under section 4 of the Tamil Nadu Prohibition of Harassment of Women Act and reduced the sentence to six months Simple Imprisonment. He would submit that the entire case is a exaggerated one due to previous enmity. The trial court finding that the witnesses P.Ws. 5 to 8 have turned hostile had acquitted the second and third accused, whereas erred in convicting the petitioner based on the evidence of interested witnesses and the appellate court also erred in believing the evidence of P.Ws.1 to 4 who are interested witnesses and thereby would seek to set aside the order.

4. Per contra, the learned Additional Public Prosecutor would submit that the appellate court while acquitting the petitioner for other offences rightly found that there are sufficient materials to convict the petitioner u/s.4 of the

Tamil Nadu Prohibition of Harassment of Women Act had convicted him. There is no illegality or error in the judgment passed by the appellate Judge and that the petitioner cannot rely upon the acquittal order passed by the trial court in respect of the other accused, when the evidence of the victim inspires confidence in respect of the averments against the petitioner.

5. Heard both sides. Perused the materials.

6. PW.1 is the victim in this case and she was aged 19 years, studying XII Standard at the time of occurrence. Her evidence is categoric and cogent with regard to the acts committed by the petitioner. Further, her evidence is corroborated by the evidence of her mother PW.2 and PW.3. The courts below have not found anything wrong with evidence of PW.2 and PW.3 since because they happened to be the relatives of PW.1. Though the independent witnesses, PW.6, PW.7 and PW.8 have not supported the case of the Prosecution, the Trial Court and the lower Appellate Court, placing reliance on the evidence of PW.1 found the accused guilty for the offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act and convicted him. Evidence of P.W.1 inspires confidence. This court does not find any error or illegality in the impugned judgement of conviction and sentence.

7. At this juncture, the learned counsel for the petitioner would pray that taking into consideration the mitigating circumstances that the occurrence had happened on 14.01.2008 and also that the petitioner is a physically challenged person, would seek that the sentence of imprisonment may be reduced.

8. In the result, this criminal revision petition is partly allowed. Considering the mitigating circumstances that the occurrence had happened in 2018 and that the petitioner is a physically challenged person, this court while confirming the conviction under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act reduces the sentence of imprisonment alone to three months simple imprisonment. The fine amount is not altered. The bail bond if any executed by the petitioner shall stand cancelled. The Trial Court shall take necessary steps to secure the petitioner to commit him to prison to undergo the remaining period of sentence, if any. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To:

1. The Sessions Judge,
(Fast Track Mahila Court),
Nagapattinam.
 2. The Judicial Magistrate,
Judicial Magistrate Court,
Sirkazhi.
 3. The Inspector of Police (L & O),
Sirkazhi Police Station,
Nagapattinam District,
 4. The Public Prosecutor, High Court, Chennai.
- +1 CC to Mr.C.Prabakaran, Advocate sr 97969.

CRL.R.C.No.268 of 2016
and
CR1.M.P.No.1852 of 2016

NMI (CO)
SP (21/02/2020)



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