



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.07.2019

CORAM

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

Cr1.A.(MD)No.260 of 2011

A.Manimozhi

... Appellant/Accused No.1

Vs.

J.K.Ashok Kumar,
Advocate,
Kuzhithurai,
Kanyakumari District.

... Respondent/Complainant

Prayer: Criminal Appeal is filed under Section 374 of Cr.P.C, to admit this appeal on file, to call for the records from the lower Courts and to set aside the Judgment passed by the learned Sessions Judge cum District Human Rights Court in his S.C.No.189 of 2009 dated 09.08.2011 by allowing this appeal.

For Appellants : Mr.S.Chellapandian

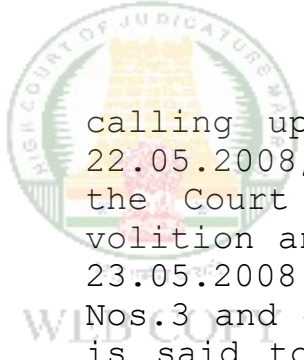
For Respondent : Mr.C.K.M.Appaji

JUDGMENT

This appeal arises out of the final Judgment passed in a private complaint filed by the respondent herein against the appellant.

2. Heard the learned counsel on either side.

3. The respondent is a practising lawyer. During the relevant time, the appellant was the Inspector of Police in Nithiravilai police station, Vilavancode Taluk, Kanyakumari District. One Leela lodged a complaint that her daughter had been abducted. In this regard, Crime No.58 of 2008 was registered against as many as four individuals under Section 363 of I.P.C. The respondent herein was the counsel for the accused in that case. He applied for anticipatory bail for the accused and got relief. Pursuant to the orders passed in the anticipatory bail petition, the accused surrendered before the Judicial Magistrate No. II, Kuzhithurai. The appellant herein had issued summons



calling upon the accused to appear before him for enquiry. On 22.05.2008, the so called victim girl lodged an affidavit before the Court stating that she was with accused No.1, on her own volition and that she had not been abducted. Be that as it may, on 23.05.2008 at about 10.00 a.m., the respondent herein took accused Nos.3 and 4 to the police station. In the meanwhile, the car which is said to have been used for abducting the girl was damaged by the family of the victim girl. In order to cause production before the Court, the appellant is said to have been seized the same and brought it to the station premises. The respondent called upon the appellant to release the car forthwith. But the appellant had stated that it was for the car owner to move the Court and obtain its custody.

4. According to the respondent, the appellant had demanded payment of a sum of Rs.10,000/- and he appears to have further stated that unless the said amount is paid, he would not release accused Nos.3 and 4. When such discussions were going in the station premises, about 50 persons gathered in the station and had assaulted the respondent herein and also abused him. According to the respondent, the appellant also held out serious threats against him. The respondent therefore lodged a private complaint under Section 200 Cr.P.C. r/w Section 2(d) of the Protection of Human Rights Act before the learned Judicial Magistrate No.II, Kuzhithurai. The same was committed to the Sessions Court, Kanyakumari Division at Nagercoil in S.C.No.189 of 2009.

5. Charges were framed against the appellant under Section 2(d) of the Protection of Human Rights Act 1993. The appellant pleaded not guilty and claimed to be tried. The respondent herein examined himself as P.W.1. Three other persons were also examined along with the complainant. On the side of the appellant, one Lurdaian was examined as D.W.1. The complainant marked Ex.P.1 to Ex.P.3. On the side of the accused, no other document was marked. On the side of the complainant, M.O.1 Torn shirt was marked.

6. The learned Judge after a detailed consideration of the evidence on record, found the appellant guilty of the offence as per Section 2(d) of the Act and directed him to make a payment of Rs.50,000/- to the complainant as compensation. Challenging the same, this Criminal appeal has been filed.

7. The learned counsel appearing for the appellant reiterated the contentions set out in the appeal memorandum.

8. Per contra, the learned counsel appearing for the complainant submitted that the impugned Judgment does not warrant any interference.



9. I carefully considered the rival contentions and perused the evidence on record.

10. In this case, the charge against the appellant is one under Section 2(d) of the Act. He was also convicted only under the said provision. Section 2(d) of the Protection of Human Rights Act 1993 is only a definitional provision. It defines that "human rights" means the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by Courts in India.

11. I fail to understand as to how the appellant could have been found guilty under the said provision. It is not a charging provision at all. In fact this was pointed out to the learned trial Judge himself by the defence counsel. But then, the objection raised by the counsel had been brushed aside and the learned trial Judge had insisted that the accused can be found guilty under Section 2(d) of the Act. As per Section 211 of Cr.P.C., if the law which creates the offence does not give it any specific name, the offence may be described in the charge by that name only and the law and section of the law against which the offence is said to have been committed shall be mentioned in the charge.

12. In this case, the Court while framing the charge had only invoked Section 2(d) of the Protection of Human Rights Act. As rightly pointed out, it is only the definitional provision and not the charging section.

13. The complainant had enclosed a telegram sent by him to the superior officer after the occurrence. These telegrams have also been marked as exhibits. A mere look at them would indicate that when the complainant was in the station premises along with the accused, a group of persons barged into the station and abused him and assaulted him. This is quite possible. A girl belonging to the fishermen community had eloped with accused No.1 who was represented by the complainant. It is obvious from the record that it was a case of elopement and not a case of kidnapping or abduction. The girl's family had gathered in large numbers and also caused damage to the car in which the girl was taken. After they came to know that the accused are in the station premises, they had also entered into the station. Since the complainant was the counsel for the accused, it is quite possible that the ire of the group turned towards the complainant also. The complainant does not appear to have suffered any injury as such. There is absolutely no evidence to sustain his case that he was assaulted. Even in the telegram, it was stated that the complainant was assaulted by a group of persons. It is not as if he suffered any



injury. Of course the appellant herein ought to have cleared the group. But then, nothing major had actually happened. Therefore, I would rather invoke Section 95 of I.P.C. Section 95 of I.P.C., reads as under:-

"95. Act causing slight harm

Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm."

14. The Court below erred in finding the appellant guilty. The impugned Judgment is set aside not only on the ground that there was no framing of proper charge but also on merits.

15. At this juncture, the learned counsel appearing for the complainant submitted that this Court can invoke Section 215 of Cr.P.C., and hold that there has been no passing of prejudice.

16. I am of the view that Section 215 of Cr.P.C., cannot be invoked in this case. When there has been no proper framing of the charge at all, Section 215 of Cr.P.C. cannot be called in aid. The Criminal Appeal stands allowed. No costs.

Sd/-

Assistant Registrar(Records)

// True Copy //

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Sub Assistant Registrar(CS)

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To:

1. The Sessions Judge cum District Human Rights Court,
Kanyakumari Division at Nagercoil.
2. The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court, Madurai.(2 copies)

+1 CC to M/s.C.K.M.APPAJI, Advocate SR-77616[F]

+1 CC to M/s.S.CHELLAPANDIAN, Advocate SR-78048[F]

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