

**Bail Slip**

Mr.Chinnadurai s/o Mayandi Nadar aged about 36 years was released on bail vide order dated 18.03.2019 in MP(MD)No.1 of 2010 in CRL.A(MD)No.91 of 2010.

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.A(MD)No.91 of 2010

Chinnadurai

... Appellant/ Accused No.1

Vs

State represented by,
Deputy Superintendent of Police,
Tuticorin Rural,
Cr.No.116/07,
Sayarpuram Police Station,
Tuticorin District.

... Respondent/ Complainant

PRAYER: Criminal Appeal is filed under Section 374 of Cr.P.C., to call for the records from the lower Court (II Additional Sessions Judge, Tirunelveli, Tirunelveli District) and to duly set aside the Judgment of the lower Court by acquitting the appellant in S.C.No.71 of 2007, dated 23.02.2007 on the file of the II Additional Sessions Judge, Tirunelveli, Tirunelveli District.

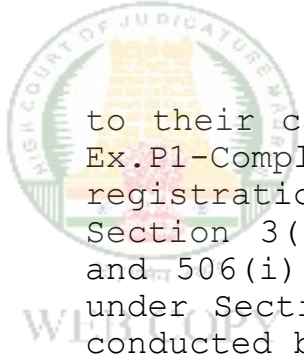
For Appellant : Mr.K.Prabhu

For Respondent : Mr.A.Robinson
Government Advocate (Crl.side)**JUDGMENT**

The appellant Chinnadurai was found guilty of the offence under Section 3(1)(X) of the SC/ST (POA) Act and sentenced to undergo six months rigorous imprisonment, vide Judgment dated 23.02.2010 in S.C.No.71 of 2008 on the file of the Second Additional Sessions Judge, Tirunelveli. Challenging the same, this appeal has been filed.

2.The prosecution case in brief is as under:-

On 15.12.2007 at about 08.00 a.m., when the defacto complainant and others were working in their fields, the accused 1 and 2 came near their field in a bike and abused them by referring

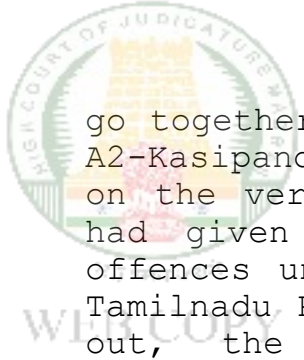


to their caste and also used filthy language. Hence, P.W.1 lodged Ex.P1-Complaint before the Sayarpuram Police Station leading to registration of Crime No.116 of 2007 (Ex.P7) for the offences under Section 3(1)(X) of the SC/ST (Prevention of Atrocities) Act, 1989 and 506(i) r/w Section 4 of TNPWHA Act, 2002. Since an offence under Section SC/ST Act was allegedly committed, investigation was conducted by the Deputy Superintendent of Police, Thoothukudi Rural. After arresting the accused and after recording the statements of all the witnesses and completing all the usual formalities, the final report was laid before the Judicial Magistrate No.1, Thoothukudi. Cognizance of the offences under Sections 294(b) and 506(ii) of IPC and Section 4 of Tamilnadu Prohibition of Women Harassment Act, 2002 and 3(1)(X) of the SC/ST (POA) Act, 1989, was taken and committed to the Sessions Court in P.R.C.No.8 of 2008. The case was taken on file in S.C.No.71 of 2008. As many as four charges were framed against both the accused. They pleaded not guilty and claimed to be tried. The prosecution examined eight witnesses and marked Ex.P1 to Ex.P10. On the side of the defence, two witnesses were examined. The learned trial Judge, by Judgment dated 23.02.2010, acquitted the second accused Kasipandian, but convicted the appellant Chinnadurai for the offence under Section 3(1)(X) of the SC/ST Act and the appellant was acquitted in respect of the other charges. Challenging the conviction and sentence, this appeal has been filed.

3.Heard the learned counsel on either side.

4.I carefully considered the rival contentions and perused the entire materials on record.

5. Even though the occurrence was said to have taken place on 14.12.2007 at about 2.30 p.m., information was given to the police station only on the next day that is 15.12.2007 at about 8.00 a.m. The distance between the occurrence and the police station is just four kilometres. There is absolutely no explanation whatsoever for the delay. According to the prosecution witnesses, there was simmering social tension in the village and the community to which the prosecution witnesses belong, have been agitating for a separate panchayat. This was opposed by the caste group, to which, the accused belong. On the day in question, the accused group had organised a Dharna. According to them, there should not be any work going on in the village. The accused were aggrieved by the fact that defying the call for Dharna organised by the accused group, the prosecution witnesses were working in their fields. Now the question is whether the appellant had actually insulted the prosecution witnesses by referring to their community. This Court went through the contents of Ex.P1 Complaint. In the complaint, Madathi-P.W.1 had stated that A2-Kasipandian had used an abusive and filthy expression. But then, in her testimony, she had sought to fasten the entire blame only on A1. In fact A2 is said to have prevailed upon A1 not to refer to the community of P.W.1 and others. Their testimony before the Court and their complaint in Ex.P1 do not



go together. The anxiety of the witness appears to be somehow save A2-Kasipandian from being convicted. This causes considerable doubt on the very veracity of Ex.P1-Complaint. The learned trial Judge had given strong reasons for acquitting A1 in respect of the offences under Sections 294(b) and 506(i) of IPC and Section 4 of Tamilnadu Prohibition of Women Harassment Act. As already pointed out, the learned trial Judge had acquitted A2 of all the charges and acquitted the appellant in respect of the other charges.

6. Even according to the prosecution, previous enmity existed between the two communities in the matter of division of Panchayat and on the fateful day, Dharna had been called for. I am therefore of the view that the wordy quarrel that had arisen over the defiance of the resolution passed by the Panchayat, had been given a communal colour. Even P.W.1, after the occurrence, did not go to the Police Station directly to lodge the complaint. One community elder by name Sekar had drafted the complaint. This reinforces the defence contention that an exaggerated version attaching a communal colour, had been given to the occurrence. I am therefore of the view that the Court below erred in convicting the appellant. The impugned Judgment is set aside. The appeal is allowed accordingly. The appellant is acquitted. If any, bail bond executed by him shall stand cancelled. If any fine amount was paid it shall be refunded to the appellant.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

Sub Assistant Registrar

To

1. The II Additional Sessions Judge,
Tirunelveli, Tirunelveli District.
2. The Deputy Superintendent of Police,
Tuticorin Rural, Sayarpuram Police Station,
Tuticorin District.
3. The District Collector, Tirunelveli District.
4. The Director General of Police, Chennai.
5. The Additional Public Prosecutor,
Madurai bench of Madras High Court, Madurai.

+1 CC to M/s.K.PRABHU, Advocate (SR-74937[F] dated 12/07/2019)

Cr1.A(MD)No.91 of 2010
11.07.2019

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