



BAIL SLIP

A.Muthukumar, S/o.Aathimula Rettayar, Appellant/Sole Accused, is released on Bail vide Court order dated 29.10.2014 made in MP (MD)No.1 of 2014 in Crl A(MD)No.293 of 2014.

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.12.2019

CORAM:

THE HONOURABLE Mr.JUSTICE M.NIRMAL KUMAR

Crl.A(MD)No.293 of 2014

A.Muthukumar

... Appellant / Sole Accused

Vs.

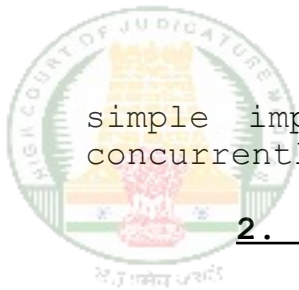
State by
The Deputy Superintendent of Police,
Uppiliyapuram Police Station,
Musiri Sub - Division,
Tiruchirapalli District.
Crime No.171 of 2013 ... Respondent / Complainant

PRAYER: Petition is filed under Section 378 of Criminal Procedure Code, against the Judgment and Conviction passed by the learned I Additional District Judge (PCR), Tiruchirapali in Special S.C.No.2/2014, dated 30.09.2014 and set aside the same.

For Appellant : Mr.B.Viswanathan
For Mr.Jagadeeshpandian
For Respondent : Mr.M.Chandrasekaran
Additional Public Prosecutor

O R D E R

This Criminal Appeal is filed by the appellant / sole accused, against the Judgment and Conviction passed by the learned I Additional District Judge (PCR), Tiruchirapali, in Special S.C.No.2/2014, dated 30.09.2014, convicting the appellant for an offence under Section 506(i) of IPC., and Section 3(1)(x) of SC/ST (POA) Act, 1989 and sentenced him to under go three months simple imprisonment, for an offence under Section 506(i) of IPC., and further sentenced him to undergo simple imprisonment for one year, for an offence under Section 3(1)(x) of SC/ST (POA) Act, 1989, and to pay a fine of Rs.1000/-, in default, to undergo three months



simple imprisonment. The above sentences were ordered to run concurrently.

2. The facts of the case are briefly stated hereunder:-

WEB COPY The defacto complainant is the Ward Member of Naganallur Panchayat Union. The accused and the defacto complainant are residing in Naganallur Village, Thuraiyur. On 15.04.2013, at about 9.00 p.m., while P.W.1 was returning from Thuraiyur proceeding near Kamatchiamman Flour Mill, the accused called him and requested to support his relative Ramaraj, for employment in the Panchayat Union, there arose some disputes. The accused threatened P.W.1 with dire consequences and also used filthy languages. Further, the accused used insulting words against the community of P.W.1 with an intention to humiliate him. P.Ws.2 and 3, who came there, pacified them. On the very next day, ie., on 16.04.2013, P.W.1 lodged a complaint at Uppiliyapuram Police Station. Since no action was taken, the defacto complainant sent the complaint on 18.04.2013 to the higher officials, by post. Then to no action was taken. Hence, P.W.1 filed a private complaint, before the learned Judicial Magistrate, Thuraiyur, who in turn, forwarded the same to P.W.6 / Sub-Inspector of Police. Thereafter, the complaint came to be registered in Crime No.171 of 2013, for the aforesaid offences.

3. In order to prove the case of the prosecution, on the side of the prosecution as many as 8 witnesses were examined as P.Ws.1 to 8 and 13 documents were marked as Exs.P1 to P13. On the side of the appellant, he examined himself as D.W.1 and marked 4 documents as Exs.D1 to D4.

4. When the appellant was questioned under Section 313 Cr.P.C., about the incriminating circumstances appearing against him, he denied the same, giving reason that appellant questioning on the function and corruption prevalent in the Panchayat Union Office because of this a false case has been fabricated against him.

5. The trial Court, on the basis of the oral and documentary evidence, convicted and sentenced the accused as aforesaid and challenging the legality of the said conviction and sentence, the present appeal has ben filed by the appellant.

6. Mr.B.Viswanathan, the learned counsel appearing for the appellant would submit that the Court below had failed to consider that P.W.1 is the Ward Member of Naganallur Panchayat Union; P.W.2 is Ex-Union Member of the Panchayat and P.W.3 is the Vice President of the said Panchayat. All were motivated against the appellant, who acted as whistle blower for maladministration and corruption

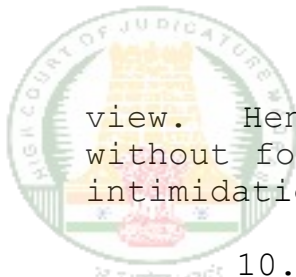


indulged in the Panchayat, in giving water connections, sewage connections, laying of roads and in appointment of staff in the Panchayat Union

7. The learned counsel for the appellant would further submit that though P.W.1 / defacto complainant states that initially he lodged a complaint with the respondent Police on 16.04.2013, thereafter, made a representation to the Superior Officers on 18.04.2013, which was not acted upon, against which, he filed a petition under Section 156(3) of Cr.P.C., before the learned Judicial Magistrate, Thuraiyur, who in turn, forwarded the same to the Sub-Inspector of Police and based on which, on 24.06.2013, the above case came to be filed. In this case P.W.8 / Investigating Officer, on receipt of complaint, visited the scene of occurrence at about 1.00 p.m., on 24.06.2013, examined all the witnesses, except P.W.6 / Sub-Inspector of Police and P.W.7 / Tahsildar. Two days latter, these two witnesses were examined and the investigation has been completed. Thus, P.W.8 / Investigating Officer had not conducted a proper investigation to find out the truth, in a haste, completed the investigation.

8. P.W.1, states that on 15.04.2013, while he was proceeding to his house, at that time, the appellant is said to have restrained him and made a request for appointment of one Ramaraj, his relative, as clerk, in the Panchayat, not heeding to it, P.W.1 proceeded further, the appellant got annoyed threatened P.W.1, by using abusive and prohibitory words and also calling upon him by using his caste name. At that time, P.Ws.2 and 3 said to have pacified and separated them and they also heard abusive words. It is admitted by P.W.1 that the place of occurrence is a private land of the appellant and no public were available and nothing had happened in public view. Though P.Ws.2 and 3 state that they came there, pacified and separated P.W.1 and the appellant, the same was not mentioned in the FIR. The lower Court failed to look into the fact that P.Ws.2 and 3 were inimically deposed against the appellant and there are cases pending against them. The appellant had made specific misappropriation and corruption allegations against them.

9. With regard to the appointment of Chelladurai, as clerk, in the Panchayat, there was strong allegation that Rs.8 Lakhs has been collected as bribe, which was flashed in the News paper, Television Channels further the villagers had held road roko. Thereafter, the Collector conducted enquiry in this regard. The appellant, being instrumental in this protest, had been targeted using P.W.1 had fabricated the case against him. Other than these, inimical interested witnesses, none have spoken against the appellant. P.W.4 / local villager though said to have seen P.Ws.1 to 3 along with the appellant, he had not made any mentioning about the appellant using abusive, prohibitory and threatening words. The occurrence had not taken place in public and public



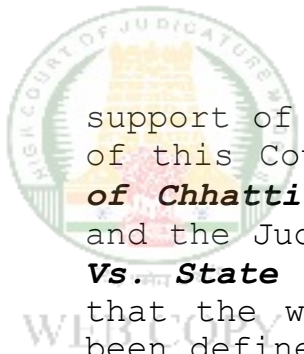
view. Hence, the offence is not made out. Further, empty threat without follow up action would not amount to an offence of criminal intimidation.

10. Continuing further, the learned counsel would submit that P.W.1 lodged a complaint on 16.04.2013 with P.W.6 / Sub Inspector of Police, P.W.6 denies any such complaint received from P.W.1. Further it is admitted that the appellant had raised certain issues through Right to Information Act (RTI) and obtained information, which triggered animosity against the appellant and P.Ws. 1 to 3. Further, P.W.2 & 3 fain ignorance on the appellant seeking information through RTI on the allegation of maladministration and corruption against them. The learned counsel submitted that P.Ws.2 and 3 had not informed the Investigating Officer about the fact that they are Ex-Union Member and Vice-President of the Panchayat respectively.

11. Contending further, the learned counsel submitted that though P.W.1 states that P.Ws.2 and 3 pacified the appellant and P.W.1. There is no mention in Ex.P1 complaint. Further, Exs.P.6 to 13 have been marked subject to objections. The trial Court had not addressed the objections given any finding in considering the documents. P.Ws.5, who is the witness to Exs.P6 & P7 / observation mahazar and sketch, states categorically that he has not aware of what has written in it and clearly states that his signature is not available in Exs.P6 and P7. Hence, the documents was marked as exhibits through P.W.8 / Deputy Superintendent of Police. P.W.8 categorically states that P.W.1 had not approached and lodged any complaint on 16.04.2013. The postal complaint also reached him belatedly, after registration of the case. P.W.8 / Investigating Officer admits that in the complaint there is no mention with regard to pacification and compromise done by P.Ws.2 and 3. He admits that all the witnesses were examined on one day and further admits that Ramaraj for whom the appellant had fight with P.W.1 has not been examined in this case.

12. In view of the witnesses in denying receipt of any complaint from P.W.1 coupled with the fact that Exs.P8 to 13 were marked on objections and further after the appellant being questioned under Section 313 Cr.P.C., on 03.04.2013, these documents viz., Exs.P8 to 13 came to be marked only on 11.08.2014, these documents are not marked following the procedure and in the manner known to law, hence, no reliance could be placed on them. On the contrary, the lower Court had placed heavy reliance on these documents and convicted the appellant.

13. Adding further, the learned counsel would submit that on the same facts of the case, the lower Court had disbelieved the version of P.Ws.1 to 3 and acquitted the appellant for offence under Section 294(b) of IPC. In such circumstances, the appellant



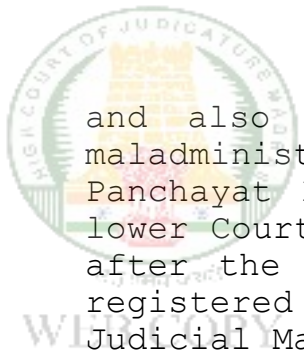
support of his contention, the learned counsel invited the attention of this Court to the Judgment of Chhattisgarh High Court in **State of Chhattisgarh Vs. Laxmiprasad Yadav** reported in **(2014 L.J.4103)** and the Judgment of Madhya Pradesh High Court in **Jasrath Singh & Anr Vs. State of M.P** reported in **(2006 (1) Crimes 767)** and submitted that the words, "intentional", "insult" and "humiliation" have not been defined in SC/ST Act and as per Oxford Dictionary, "humiliate" means to cause a person to feel disgrace, humble condition, or attitude of mind. In the background of definition of the aforesaid words, to prove the offence under the aforesaid section it is necessary that there must be an element of intentionally committing insult or intimidating with intent to humiliate a member of Schedule Caste and for that the evidence of the witness should be consistent and reliable. Further, addressing a person with his caste name, without any intention to insult or intimidate does not constitute the offence under the said Act. In this case, the occurrence had not taken place in public view and the available witnesses are interested, motivated, inconsistent and unreliable one.

14. Mr.M.Chandrasekaran, the learned Additional Public Prosecutor appearing for the State, on instructions, would submit that in this case, on receipt of complaint / Ex.P1, FIR / Ex.P2 came to be registered, thereafter, P.W.6 / Sub-Inspector of Police, who registered the FIR forwarded the same to P.W.8 / Deputy Superintendent of Police / Investigating officer, who, on receipt of FIR, immediately visited the scene of occurrence, examined the witnesses, prepared observation mahazar, rough sketch, obtained certificate from the Tahsildar and thereafter, he had filed the charge sheet in this case.

15. Learned Additional Public Prosecutor would further submit that P.W.2 and 3 had categorically stated about seeing appellant quarrelling in heated passion with P.W.1 / victim, using abusive words. P.W.4 is a villager, who had stated about the presence of P.Ws.1 to 3 along with the accused, in the scene of occurrence. Hence, their evidence are reliable. The defence raised by the appellant are afterthought, which are created for defence of the case. The trial Court, on appreciation of the evidence and the materials produced, had rightly convicted the appellant. Hence, prayed for dismissal of the appeal.

16. I have heard the submissions made by the learned counsel appearing on either side and perused the materials available on record.

17. On perusal of the materials, It is seen that P.W.1 is the President of Naganallur Panchayat Union; P.W.2 is Ex-Union Member of the Panchayat and P.W.3 is the Vice President of the Panchayat. All the three witnesses admit about termination of Typist Senthil Kumar and appointment of one Chinna Durai, as Clerk



and also the queries raised by the appellant with regard to maladministration and the allegation of corruption against the Panchayat Members, through Right To Information Act. Though the lower Court had stated that RTI application is dated on 29.05.2013, after the incident, it could be seen that this case came to be registered only on 24.06.2013, the complaint was filed before the Judicial Magistrate on 11.06.2013 only.

18. Further, P.Ws.6 and 8 / Sub-Inspector of Police and Deputy Superintendent of Police denied about receipt of any such complaint, dated 16.04.2013 and Exs.P8 to P13 have been marked subject to objections and the lower Court had not given any reason for accepting the same. It is seen that there have been animosity between the appellant and P.Ws.1 to 3 and there are cases pending between them. Hence, P.Ws.1 to 3 are all interested witnesses with clear motive against the appellant. The only other witness is P.W.4 / local villager. This witness though states that he had seen P.Ws.1 to 3 along with the appellant, on 15.04.2013, he does not mention about the appellant using abusive, prohibitory, threatening words and calling upon P.W.1 by his caste name. While coming to a conclusion that the appellant is guilty, the lower Court had placed heavy reliance on Exs.P8 to P13, but failed to look into the fact that these documents had been produced after Section 313 Cr.P.C., questioning of the accused, with considerable delay and no reason given for belated presentation. There is no proof or authenticity to show that the complaint has been lodged before the respondent Police, except the postal acknowledgement card coupled with the fact that P.Ws, 6 and 8 categorically deny about receipt of any such complaint.

19. Further, it is seen that the lower Court conclusion is an surmises and conjectures and convicted the accused. Further, the findings of the lower Court that P.W.1 acted as henchman of P.Ws.2 and 3 has not been proved. It is to be seen that P.Ws.1 to 3 are members of the Panchyat. The appellant had made a specific allegation against the members of the Panchayat, President, Vice President in appointment of clerk, drinking water and sewage water connections, laying of road etc., Hence, the appellant is the common enemy for P.Ws.1 to 3. In view of the animosity between P.Ws. 1 to 3 against the appellant and also taking note of the fact that P.W.4 / independent witness had not stated about the appellant using any abusive words in threatening P.W.1 and the occurrence had not taken in a public place and public view, the offence would not be made out, further, empty threat without follow up action would not amount to an offence of criminal intimidation. In view of the above, this Court is of the view that the Judgment of conviction and sentence, rendered by the trial Court, are not based on correct appreciation of evidence, and law on the point and the same warrants interference by this Court.



20. In fine, this Criminal Appeal is allowed by setting aside the Judgment and Conviction passed by the learned I Additional District Judge (PCR), Tiruchirappalli in Special S.C.No.2/2014, dated 30.09.2014. The appellant is acquitted of the charge framed against him. The bail bonds, if any, executed by the appellant, shall stand cancelled. The fine amount, if any, paid by the appellant shall be refunded to him.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

MPK

To

1. The I Additional District Judge (PCR),
Tiruchirapalli.
- 2.The Deputy Superintendent of Police,
Uppiliyapuram Police Station,
Musiri Sub - Division,
Tiruchirapalli District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Section Officer,
Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2C)

+1cc to Mr.M.JEGADEESHPANDIAN, ADVOCATE, SR NO.103932

Cr1.A(MD)No.293 of 2014

04.12.2019

KK/SAR/20.12.2019/7P-7C/