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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL RC (MD) No.187 of 2013

and

MP (MD) No.1 of 2013

1.M.Sowkath Ali

2.Saramma Begum

... Petitioners

Vs.

The Inspector of Police,
Fort All Women Police Station,
Trichy.

... Respondent

Prayer : This Criminal Revision Case is filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records and set aside the order dated 03.10.2012 passed by the learned Principal District and Sessions Judge, Trichirappalli in Crl.Appeal No.73 of 2012 against the order passed in S.T.C No.509/2011 on the file of the learned Judicial Magistrate No.1, Trichirappalli.

For Petitioner : Mr.C.Jeganathan

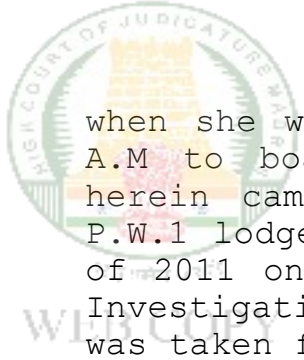
For Respondent : Mr.A.Robinson,
Government Advocate (crl.side)

ORDER

The revision petitioners were prosecuted for the offences under Sections 323, 354 and 506(I) IPC in S.T.C No.509 of 2011 on the file of the learned Judicial Magistrate No.I, Trichy. By judgment dated 01.08.2012, the revision petitioners were acquitted of the offence under Section 506(I) IPC. The first accused was found guilty of the offences under Sections 354 and 323 of IPC and was levied with a fine of Rs.3000/- and Rs.1000/- respectively. The second accused was found guilty under Section 323 IPC and levied with a fine of Rs.1000/-. Questioning the same, they were filed Criminal Appeal No.73 of 2012 before the Principal District and Sessions Judge, Trichy. By judgment dated 03.01.2012, the appeal was partly allowed and the fine imposed by the lower court under Section 323 of IPC was reduced to Rs.750/- for each. The conviction and sentence imposed on the first petitioner in respect of the offence under Section 354 was set aside. Challenging the same, this criminal revision case has been filed.

2.When the matter was taken up for hearing, the learned counsel for the petitioners submitted that the defacto complainant has not challenged the acquittal of the first petitioner in respect of the offence under Section 354 IPC.

<https://hcservices.ecourts.gov.in/hcservices/>
3.The case of the prosecution is that there was a drainage dispute between P.W.1 and the revision petitioners herein. Their houses are situated opposite to each other. According to P.W.1,



when she was waiting in the bus stop on 18.04.2011 at about 09.00 A.M to board Perambalur Bus near Chitra Hotel, the petitioners herein came to the spot and committed the offences in question. P.W.1 lodged Ex.P1 complaint leading to registration of Crime No.11 of 2011 on the file of the Fort All Women Police Station, Trichy. Investigation was undertaken and final report was filed. Cognizance was taken for the offences under Sections 354, 323 and 506(I) IPC by the learned Judicial Magistrate No.I, Trichy in S.T.C No.509 of 2011.

4.The defacto complainant/P.W1 was cross examined at length. She admitted that there has been a drainage dispute pending between the two families for more than two years. In this regard, mutual complaints were given. Even 4 or 5 days prior to 18.04.2011, some dispute arose between the two. According to the defacto complainant, the occurrence took place at 09.00 A.M. Very near to the occurrence spot, there is a police outpost but the P.W.1 did not lodge the complaint in the said outpost police station. Instead, she chose to go to Fort All Women Police Station, Trichy and lodged the complaint. P.W.1 did not go to the doctor. The revision petitioners are husband and wife. It is simply impossible to believe that the first petitioner in the presence of his wife would have behaved in such a manner with another woman. That is why the appellate judge rightly acquitted the first petitioner herein of the offence under Section 354 of IPC. The same has not been challenged by the defacto complainant. The acquittal in respect of the offence under Section 354 IPC become final.

5.What remains is that whether this Court should confirm the conviction in respect of the offence under Section 323 IPC. When the defacto complainant admits that there has been a long pending drainage dispute between the two and there has been repeated filing of complaints on either side and when the defacto complainant instead of approaching the nearest police station, chose to lodge a formal complaint with another police station, I am of the view that it would not be safe to sustain the conviction under Section 323 IPC. It is quite possible the petty quarrels erupting between the two culminated into criminal complaints. I am of the view that the revision petitioners are entitled to benefit of doubt.

6.In this view of the matter, the judgment of the first appellate court insofar as it confirms the conviction imposed on the revision petitioners under Section 323 IPC is set aside. The criminal revision case is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

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To

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- 1.The Inspector of Police,
Fort All Women Police Station,
Trichy.
- 2.The Principal District and Sessions Judge, Trichirappalli.
- 3.The Judicial Magistrate No.1, Trichirappalli.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-72585[F] dated
01/07/2019)

CRL RC (MD) No.187 of 2013
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VB(17.12.2019) 3P 6C