



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.03.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.104 of 2019

Perambai Shanmugam

...Petitioner

Vs

State, rep.by
The Sub Inspector of Police (L&O),
Chennai Central Railway Police Station,
Chennai.

... Respondent

PRAYER: This Criminal Revision case is filed under Section 397 read with Section 401 of Cr.P.C. to call for the records and set aside the order of Impugned Judgment in C.A.No.39 of 2016, dated 24.12.2018 passed by the learned I Additional Sessions Judge, City Civil Court, Chennai, confirmed the Judgment of the Trial Court in C.C.No. 226 of 2015, dated 01.02.2016, on the file of the learned XVI Metropolitan Magistrate, George Town, Chennai, pending Revision on the file of this Court.

For Petitioner : Mr.A.S.Balaji

For Respondent : Mr.K.Madhan,
Government Advocate (Crl.)

O R D E R

This Criminal Revision Case has been filed against the Judgment dated 24.12.2018 in C.A.No.39 of 2016 passed by the learned I Additional Sessions Judge, City Civil Court, Chennai, in and by which, confirmed the judgment dated 01.02.2016 in C.C.No. 226 of 2015 on the file of the learned XVI Metropolitan Magistrate, George Town, Chennai.

2. The respondent Police registered a case in Crime No.348 of 2014 for an offence punishable under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998 against the petitioner. On completion of the investigation, the respondent Police filed a charge sheet before the learned XVI Metropolitan Magistrate and the same was taken on file in C.C.No.226 of 2015. After framing the charges, during the trial, in order to prove



the case of the prosecution as many as 11 witnesses were examined as P.W.1 to P.W.11 and also marked Ex.P1 to Ex.P4. After completion of the prosecution side evidence, the incriminating circumstances culled out from the evidence were put against the petitioner and the petitioner was examined under Section 313 of Cr.P.C., wherein he denied all the incriminating evidences and circumstances as false and pleaded not guilty. On the side of the defence, no oral and no documentary evidence were marked.

3. The trial Court, after hearing the arguments advanced on either side and also considering the materials available on record found that the accused/petitioner is guilty for the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998 and convicted and sentenced him to undergo simple imprisonment for a period of one year and to pay a sum of Rs.10,000/-, in default, to undergo simple imprisonment for a period of one month. Aggrieved over the said conviction and sentence, the petitioner preferred an appeal before the learned Principal Sessions Judge, City Civil Court, Chennai and the same was taken on file in C.A.No.39 of 2016 and made over to the learned First Additional Session Judge, City Civil Court, Chennai for disposal. The learned Sessions Judge, after hearing the arguments dismissed the appeal and confirmed the order of the trial Court. Challenging the same, the petitioner is before this Court with this Criminal Revision Case.

4. The learned counsel for the petitioner would submit that no such occurrence was taken place in the train as stated by the de facto complainant. The Lower Appellate Court has not applied its judicial mind regarding perverse judgment of the trial Court and did not take into consideration the judgment of the Apex Court and the High Courts on the jurisdictional point and other laches in conducting the trial and the prosecution failed to prove the case beyond all reasonable doubt. In criminal cases, convicting the accused for the alleged charges has to be established by the prosecution and not by the petitioner/accused. The Lower Appellate Court failed to consider the facts and circumstances of the present case and simply confirmed the order of the trial Court. He would further submit that there was delay in filing the complaint. The alleged incident is said to have taken place on 19.06.2014, whereas, the complaint was given only on 26.06.2014. There was an enormous delay of 7 days in filing complaint, which has not been explained by the prosecution. Even though, the complainant stated that she was not feeling well and therefore, did not lodge the complaint on time, it is seen that, during the relevant time i.e., between the date of occurrence and the date of the complaint, she attended her office. Therefore, the reasons stated for the delay in filing the complaint is not



acceptable. The trial Court failed to consider the same and convicted the petitioner and the Lower Appellate Court also confirmed the same. The findings given by the Magistrate is erroneous. He further submitted that the accused preferred a complaint against the de facto complainant, the respondent Police instead of registering the case, investigated the matter and foisted a false case against the petitioner, based on the complaint preferred by the de facto complainant. The prosecution has not established as to whether the de facto complainant and the petitioner were travelling in the same train on the date of occurrence. None of the co-passengers were examined in this case. Without collecting ticket from the witnesses, who were said to have travelled with them, it cannot be stated that they were travelling on the same train and on the same day. The investigating officer has failed to collect the ticket either from the complainant or from the other witnesses, who travelled as passengers. He would further submit that the main allegation against the petitioner is that he has taken the photo of the defacto complainant in his cell phone, but, the same was not seized by the respondent Police. The police neither recovered the cell phone nor the tickets. He would further submit that the petitioner has not committed any such offence, however, the trial Court has failed to appreciate the entire evidence and simply convicted and sentenced the petitioner on the ground of assumption and sympathy. Against the conviction of the trial Court, the appellant filed an appeal, without reappraising the evidence, the said appeal was also dismissed.

5. Mr.K.Madhan, learned Government Advocate would submit that the de facto complainant, who is working in Chennai and the petitioner were travelling in the train on the date of occurrence on 19.06.2014 and the petitioner was harassing the de facto complainant by taking photographs in his mobile phone. The occurrence had taken place on 19.06.2014 and the complaint was given on 26.06.2014. Since the petitioner has apologized more than once, she has decided not to lodge a complaint. After the occurrence, the de facto complainant has given a complaint. The defence taken by the petitioner that P.W.6 paternal uncle of the de facto complainant is alleged to have committed the theft of 3 sovereigns of gold chain from the petitioner and hence, only to save P.W.6 from the complaint regarding the theft, the de facto complainant filed a false case against the petitioner, which is not an acceptable one. The petitioner has not given any complaint against P.W.6. Therefore, the delay in lodging the complaint has been explained properly.

6. The learned Government Advocate (Crl.Side) would further submit that both the Courts below have rightly appreciated the entire evidence on record and convicted and sentenced the petitioner for the charged offence. The petitioner himself



admitted that he travelled in Palani Express train on 19.06.2014. Therefore, the prosecution has proved its case beyond all reasonable doubt and the trial court has rightly convicted the petitioner which has also been confirmed by the appellate court.

7. Heard both side and perused the records available on case file.

8. On reading of the entire material records, this Court finds that the trial Court, after framing the charges, conducted trial against the petitioner and on appreciation of evidence adduced on the side of prosecution, found the petitioner guilty for the offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act. There is no perversity in appreciation of evidence or applying law. This Court while dealing with the revision, has to see as to whether there is any perversity in appreciation of the evidence. This court finds that entire materials has been dealt in detail by the trial Court. The trial Court discussed the evidence in detail and on going through the entire oral and documentary evidence put forth during trial, convicted the Revision Petitioner. The lower appellate Court as a final Court of fact finding reappreciated the entire oral and documentary evidence and dismissed the appeal.

9. The contention raised by the learned counsel for the Revision Petitioner is that the Revision Petitioner was charged under Section 4 of Tamil Nadu Harassment of Woman Act, 1998 and it was not made out and no proof of travelling both the complainant and Revision Petitioner in the train on the day of occurrence and further no mobile phone is recovered and therefore, prejudice is caused to the Revision Petitioner. But this Court does not find any substance in the said contention that prejudice is caused to the Revision Petitioner and he has been wrongly convicted under Section 4 of Tamil Nadu Prevention of Women Harassment Act. The charges framed against the Revision Petitioner has been proved by the prosecution and there is no perversity in the finding of the courts below. Further, non recovery of train tickets would not in any way, affect the prosecution case as the Revision Petitioner himself admitted that he travelled in the Palani Express on the date of occurrence, The occurrence taken place on 19.06.2014 and the complainant decided to prefer the complaint on 26.06.2014 and there was 7 days delay. Both the Courts have appreciated the evidence and satisfied with the reasons for the delay in preferring the complaint and that the delay was properly explained by the prosecution. Therefore, the contention raised by the learned counsel for the petitioner is rejected. There is no perversity in the findings of the courts below.



10. As far as non-recovery of mobile phone is concerned, it is observed by the Lower Appellate Court that evidence of P.W.1, P.W.5 to P.W.7 would substantiate the contention of the prosecution that the Revision Petitioner had taken the photograph of P.W.1 in his mobile phone and co-passengers had dealt him and his mobile phone had been broken. Therefore, non-recovery of mobile phone will not in any way fatal to the case of the prosecution.

11. Both Courts, on going through the entire evidence and on perusing the records gave finding and while dealing with the Revision, this Court need not sit in the armchair of the Appellate Court. This court has to see whether there is any perversity in appreciation of the evidence.

12. On reading the entire material records, this Court does not find any perversity in appreciation and there is no reason to interfere with this Court and there is no illegality or irregularity in the Judgment of the both courts in appreciation of evidence or applying law and therefore, there is no reason to interfere with the Judgment of the Courts below and there is no merits in the Revision. Accordingly, the Revision Petition is dismissed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

- 1.The I Additional Sessions Judge,
City Civil Court, Chennai.
- 2.The XVI Metropolitan Magistrate,
George Town, Chennai.
- 3.The Sub Inspector of Police (L&O),
Chennai Central Railway Police Station,
Chennai.
- 4.The Public Prosecutor,
High Court, Madras.

Cr1.R.C.No.104 of 2019

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NSK 22/07/2021