



BAIL SLIP

The Petitioner/Accused namely Mr.Mohammed Nasurudheen, S/o.Abdul Kappor was directed to be released on bail as per order of this Court dated 27.07.2015 in MP.No.1 of 2015 in CrI.R.C.No.640 of 2015 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE OF RESERVING ORDER 13.07.2021	DATE OF PRONOUNCING ORDER 22.09.2021
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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.R.C.NO.640 OF 2015

Mohammed Nasurudheen

.. Petitioner/Appellant/
Accused

..Vs..

State By:

The Inspector of Police,
All Women Police Station,
Palladam, Thiruppur District.
(Crime No.5/2011)

.. Respondent/Respondent/
Complainant

PRAYER :

Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to call for the records pertaining to the order of conviction and sentence dated 31.03.2015 in C.A.No.27/2014 on the file of the Principal Sessions Judge, Thiruppur, confirming the order of conviction and sentence dated 16.04.2014 in C.C.No.247/2011 on the file of the Judicial Magistrate Court, Palladam, Thiruppur District and set aside the same by allowing the above Criminal Revision Petition.

For Petitioner : Mr.P.Pugalenth

For Respondent : Mr.R.Vinoth Raja,
Government Advocate



O R D E R

The matter is heard through "Video Conference".

2. The convicted sole accused is the revision petitioner herein. The respondent-police filed a final report in Crime No.5 of 2011, for the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998 (herein after referred to as 'the Act'), and the case was initially taken on file as C.C.No.247 of 2011, on the file of the learned Judicial Magistrate Court, Palladam, Thiruppur District.

3. The petitioner/accused was charged under Section 4 of the Act in C.C.No.247/2011 on the file of the learned Judicial Magistrate Court, Palladam, Thiruppur District. The learned Magistrate by judgment dated 16.01.2014, had convicted the petitioner and sentenced to undergo two years rigorous imprisonment for the offence under Section 4 of the Act and imposed a fine of Rs.10,000/- in default of payment of fine to undergo sentence for a period of three months simple imprisonment.

4. On appeal, in C.A.No.27/2014, before the Principal Sessions Court, Thiruppur against the conviction and sentence, the appellate Court was also confirmed the above conviction and sentence on 31.03.2015.

5. The learned counsel for the convicted accused would contend that Investigation Officer has not examined the family members of the accused, when admittedly the alleged scene of the occurrence is in shop, which is a part of their house and furthermore, the family of the accused is residing inside the very same area and the Investigation Officer also not examined anyone in the neighbouring house or businessman in the neighbouring shop which is a busy area. P.W.1 was returning home with hue and cry, on enquiry, described the incident to P.W.3 and P.W.4. Therefore, they are only hearsay witnesses.

6. Heard, the learned Government Advocate.

7. The case of the prosecution in brief is that:

(a) the petitioner was running a Grocery shop at Velappanayagan Palayam, Palladam, Thiruppur District. On 16.05.2011, at about 13.00 hours, the defacto complainant namely R.Kalamani who was a resident of Velappanayagan Palayam had purchased some goods from the petitioner's shop at that time the petitioner was touch her left breast. Due to the said alleged allegation on 18.05.2011 at about 11.30 hours the defacto complainant lodged a complaint and the case in Crime Number 5 of 2011 was registered by the respondent police under Section 4 of



Tamil Nadu Prohibition of Harassment of Women Act against the petitioner.

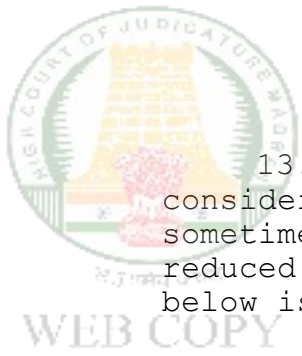
8. The suggestive case of the defence is that the defacto complainant had been purchased goods from his shop in credit. The petitioner claimed the credit amount, but not repaid the amount. Due to the said motive, she lodged a false complaint against the petitioner.

9. On perusal of Ex.P1 complaint, date and time of the alleged occurrence, is not mentioned. However, it was clearly spoken to by P.W.1 in the witness box. P.W.2/Ramesh Kumar, husband of P.W.1, came to know the incident and on the next day, subsequently, they filed the complaint. P.W.4/Kanagaraj, deposed in his evidence, the alleged occurrence was happened on 17.11.2011 as described by P.W.1 when he was on the road, assumes significance.

10. P.W.1 is the victim girl, her evidence inspires the confidence of this Court, on two points. It the specific evidence that on 16.05.2011, while she went go purchase the provision and grocery from the shop running by the accused, all of a sudden, the accused had touched left breast and she made hue and cry and ran from the shop. While she was returning, P.W.3/Palanisamy and P.W.4/Kanagaraj, enquired as to what had happened and she had narrated the same, this is immediately after the incident, as spoken to by P.W.3 and P.W.4, which stands duly corroborated by P.W.1.

11. The defence case of the accused is that P.W.1 had taken the provisions to the extent of Rs.4,500/-, when she asked for further grocery on credit basis, the same was refused and the accused insisted upon the payment of old balance of Rs.4,000/- and hence, a false case has been foisted against him. Non examination of the neighbours is not fatal to prosecution case which is of the nature, touching upon the modesty of the women.

12. The non mentioning of date in the complaint, do not affect the case of the prosecution, since the complaint is not encyclopaedia of the entire facts and circumstances, as held in the decision reported in 2010 (5) CTC 794 and thus, this Court finds that the prosecution has proved the charge under Section 4 of the Act, beyond reasonable doubt and in the absence of any positive evidence or probabalising the suggestive case in the cross examination of the prosecution witnesses and hence, in view of the clear and cogent evidence of P.W.1 coupled with the corroborative evidence of P.W.3 and P.W.4, the conviction laid by the Courts below regarding Section 4 of the Act, is legally sustainable.



13. On the point of quantum of punishment, taking into consideration that the accused is already in custody for quite sometime and the act of the accused, the conviction period is reduced to two months and the fine amount imposed by the Courts below is kept intact.

14. Accordingly, the criminal revision case is partly allowed. The conviction passed under Section 4 of the Act, in C.C.No.247 of 2011 as confirmed in C.A.No.27 of 2014 is hereby confirmed. The sentence awarded by the Courts below of two year rigorous imprisonment shall stand modified and reduced to two months and the fine amount awarded is kept intact. The period of custody during the investigation and the trial, if any, is ordered to be set off. The Magistrate is directed to issue non-bailable warrant and secure the accused to undergo the remaining period of sentence awarded.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
All Women Police Station,
Palladam, Thiruppur District.
2. The Principal Sessions Judge,
Thiruppur.
3. The Judicial Magistrate Court, Palladam,
Thiruppur District.
4. The Public Prosecutor, (Crl.Side)
High Court of Madras.

Crl.R.C.No.640 of 2015

SRA(CO)
CS/27/10/2021