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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.07.2021
PRONOUNCED ON : 30.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Cr1.R.C.No.965 of 2015
and M.P.No.1 of 2015

M.Murugan

... Petitioner/Accused

Vs.

The State represented by
the Station House Officer,
Grand Bazaar Police Station,
Puducherry through the Public Prosecutor

... Respondent/Complainant

Prayer: This Criminal Revision Case has been filed under Section 397 read with Section 401 of Cr.P.C., against the order of conviction passed in Criminal Appeal No.9 of 2015, dated 18.08.2015, on the file of the learned III Additional Sessions Judge, Puducherry, confirming the order of conviction passed in C.C.No.108 of 2013, dated 19.02.2015, on the file of the learned Chief Judicial Magistrate at Puducherry, in so far as convicting the petitioner to undergo simple imprisonment for one month for the offence under Section 294 (a & b), simple imprisonment for one year for the offence under Section 332 of IPC and a fine of Rs.1,000/- in default to pay the fine to undergo simple imprisonment for one week alone.

For Petitioner : Mr.C.S.Dhanasekaran
for Mr.B.Baskaran

For Respondent : Mr.Bharatha Chakravarthy
Public Prosecutor (Pondicherry)

JUDGMENT

(The case has been heard through Video Conference)

The convicted accused is the revision petitioner herein.

2.This Criminal Revision Case is filed against the order of conviction passed in Criminal Appeal No.9 of 2015, dated 18.08.2015, on the file of the learned III Additional Sessions Judge, Puducherry, confirming the order of conviction passed in



C.C.No.108 of 2013, dated 19.02.2015, on the file of the learned III Additional Sessions Judge at Puducherry, in so far as convicting the petitioner to undergo simple imprisonment for one month for the offence under Section 294 - A & B simple imprisonment for one year for the offence under Section 332 of I.P.C and a fine of Rs.1000/-, in default to pay the fine to undergo simple imprisonment for one week alone.

3.The respondent police has filed a charge sheet against the accused/revision petitioner herein alleging that on 01.05.2013 at about 17.00 hours at Bharathy Park, Puducherry, the accused noted in the charge sheet under the influence of alcohol, showed his private part to the public and thereby caused annoyance to the general public, the complainant and his co-worker PC 2400 Anbazhagan/PW2, while discharging their official duty tried to prevent the accused and the accused abused them with filthy language, assaulted the complainant with his leg and wooden log on his face and stomach and thereby caused simple injuries to him and threatened him with dire consequences and therefore, the accused has alleged to have committed offences punishable under Section 294-A&B, 186, 332, 506 (ii) I.P.C and 34 E-1 of Pondicherry Police (Amended) Act.

4.On the side of the prosecution, P.W.1 to P.W.9 were examined and Exs.P1 to P7 were marked. On the side of the defence, no witness has been examined and no documentary evidence has been marked.

5.After the trial, the learned Judicial Magistrate, Puducherry, by an order dated 18.08.2015 has held that the accused is found guilty for the offences under Section 294 - A & B and 332 I.P.C and convicted under Section 255 (2) of Cr.P.C. For the offence under Section 294 - A & B the accused is sentenced to undergo simple imprisonment for one month and for the offence under Section 332 I.P.C, the accused is sentenced to undergo simple imprisonment for one year and also to pay a fine of Rs.1000/- in default to pay the fine, to undergo simple imprisonment for one week. The period of detention already undergone by him is ordered to be set off under Section 428 Cr.P.C. Both the sentence shall run concurrently. The accused is acquitted under Section 248 (1) of Cr.P.C. Since the accused is punished under Section 332 I.P.C, there is no separate sentence passed under Section 186 I.P.C and he also punished under Section 294 - A & B, there is no separate sentence passed under Section 34 E-1 of P.P.Act.

6.Aggrrieved against the said conviction and sentence, appeal before the III Additional Sessions Judge, Puducherry in CrI.A.No.9/2015 and the same was dismissed and hence the accused has preferred Criminal Revision Case before this Court.



7.The learned counsel for the revision petitioner could contend that the testimonial of PW4, PW5 and PW6, who are independent witnesses have turned hostile, they are not whispered anything about the commission of the alleged offence or involvement of the accused.

8.The learned counsel for the revision petitioner further contended that with regard to the charge under Section 294 A & B, the essential ingredients of "annoyance to the public" was not established by the prosecution beyond reasonable doubt and with regard to charge under Section 332 of I.P.C., P.W.1 and P.W.2 who have said to have been on duty in discharging their official duty has been iterated and hence, the second Section 332 of I.P.C is not satisfied in the absence of any specific averment or whispered by them.

9.Per contra learned Public Prosecutor (Pondicherry) could submit that minor contradictions or discrepancy shall not be allowed to doubt the prosecution cases. While P.W.1 and P.W.2 whereon duty in the Secretariat, in the park annexed thereto, the act of the accused was brought to the knowledge of the police. While P.W.1 and P.W.2 went and enquired in the scene of the occurrence, as narrated supra, the accused conducted himself and cause annoyance to the general public and his act of obscenity and utterance of obscene words spoken to P.W.1 and P.W.2 and made submission in support of the said finding of the trial Court.

10.Initially, charges were framed against 294 - A & B, 332 I.P.C and 186 of I.P.C as well as 34 E-1 of the Pondicherry Police Amendment Act and the Trial Court has chosen to convict and passed sentence under Section 332 of IPC consequently has not passed any separate sentence against under Section 186 of IPC so also since the accused was punished under Section 294 - A & B.

11.The case of the prosecution is that on 01.05.2013 at about 17.00 hours at Bharathy Park, Puducherry, the accused under the influence of alcohol, showed his private part to the public and thereby caused annoyance to the general public, the complainant and his co-worker PC 2400 Anbazhagan, while discharging their official duty tried to prevent the accused and the accused abused them with filthy language, assaulted the complainant with wooden log on his face and stomach and thereby caused simple injuries to him and threatened him with dire consequences and so the charge sheet is filed under Section 294-A&B, 186, 332, 506 (ii) I.P.C under Section 34E-1 of PP Act.

12.The suggestive case of the defense is that except P.W.1 and P.W.2 police officials no one support the prosecution case.



The watchman, gardener and manager of the Bharathi Park, turned hostile, and so the prosecution has failed to prove its case. P.W.1 is the complainant and injured and he gave a special report to the police about the occurrence, the special report is marked as Ex.P1, he has sustained an injury in the occurrence and the wound certificate issued to him is marked as Ex.P2. P.W.2 is another police constable has corroborated the evidence of P.W.1, another witness in the occurrence is the sweeper, gardener and watchman of the park viz., PW4, PW5 and PW6.

13.This criminal law was settled into motion by filing Ex.P1/ special report by P.W.1. Admittedly, P.W.3 and P.W.4 said to have been informed the P.W.1 and P.W.2 about the manner how the accused has subjected himself with the general public park and when P.W.1 and P.W.2 said to have visited the public place in the park, their evidence is to the effect as extracted supra does not support the prosecution as P.W.4, P.W.5 and P.W.6 have turned hostile assumes significance.

14(a).In the decision reported in 1996 SCC Cr1.583 [Pawan Kumar Vs. State of Haryana and Another] the Hon'ble Supreme Court has held as follows:

"A. Service Law - Termination of service - Grounds for - Conviction for offence involving moral turpitude - Moral turpitude - What amounts to - Policy decision of Haryana Govt. laying down tests for determination of moral turpitude - Summary trial of the appellant for offence under S.294 IPC - Appellant sentenced to a fine of Rs 20 on his pleading guilty - Copy of summary register neither disclosing the substance of allegations nor the words in which the plea of guilt was entered - Held, conviction of the appellant under S.294 IPC per se would not establish moral turpitude unless the tests laid down in the policy decision are satisfied - Need for making provision that punishment of fine up to a certain limit, say up to Rs 2000 or so, on a summary/ordinary conviction shall not be treated as conviction at all for any purpose, especially entering govt. service, stressed - Penology - Plea bargaining - Penal Code, 1860, S.294 - CrPC, 1973 S.264 - Words and phrases - 'Moral turpitude' - Jurisprudence - Morality and the law - Law and the courts must take cognizance of the changing moral standards.

B. Criminal Procedure Code, 1973 - S.264 - Summary trial - Magistrate not obliged to write a judgment containing a brief statement of reasons



but he must record the substance of the evidence - When substance of accusation is not put to the accused his entering upon any kind of plea is no plea at all - Plea bargaining."

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14(b). In the decision reported in 1979 (1) SCC 128. [D.Chattaiiah and others Vs. State of Andhra Pradesh], the Hon'ble Supreme Court has held as follows:

"Sections 332 & 323 - Assault having no real nexus or causal connection or consequential relation with the performance of duty by the complainant as public servant - No evidence to show that intent of the assailants was to prevent or deter the complainant from discharge of his duty - Conviction altered to that under Section 323 - Fine of Rs 200 to be paid to the complainant."

15.P.W.1 and P.W.2 could depose that when they went to the park they found that the accused was in such a state. However, in the cross examination, they have admitted that the accused was arrested from liquor shop when he was consuming liquor assumes significance. With regard to discharge official duty PW1 & PW2 and furthermore, I find that the medical evidence of P.W.3 and P.W.7 found to be at variance with regard to injury. Admittedly, the evidence of P.W.1 with regard to causing of injury is to the limited extent that he was technical by them. While the evidence of P.W.2 was that the accused has attacked by P.W.1 with stick. For the reasons known to the investigation officer, the material object was not seized were not produced before this Court.

16.On a perusal of the records, it is seen that in the final report filed by the respondent police it is mentioned as the accused has committed the offence under Sections 294 - A & B, 186, 332, 506(ii) of IPC and 34 E-1 of PP Act. In support thereto, PW1 & PW2, who were said to be on their official duty at the legislative Assembly of Puducherry, said to have received information from PW4, who is the sweeper attached to the nearby public park. On such information they went and saw the accused inebriated stage of high level alchohal, has conducted himself in obscene manner and he was alleged to have shown private part to the general public. On questioning PW1, the accused said to have assaulted PW1 and caused injury and deteriorated him from discharging of his official duty. Admittedly, PW4, PW5 & PW6, who are respectively, sweeper, gardener and watchman of the public park, have turned hostile and not supported the case of the prosecution. The alleged wooden stick as spoken to by PW1 and the same stick as spoken to PW2, was not seized by the investigation officer viz., PW8/Sivakumar and no plausible



explanation has been produced or adduced by the prosecution and non production of the stick assumes significance.

17.The Ingredients of offence under Section 294 of IPC:

"[Pawan Kumar Vs. State of Haryana - (1996) 4 SCC 17 : 1997 SCC (Cr1) 583] - In order to secure a conviction, the provisions of section 294, I.P.Code require two particulars to be proved by the prosecution, namely: (i) the offender has done any obscene act in any public place or has sung, recited or uttered any obscene song or word in or near nay public place; and (ii) has so caused annoyance to others. If the act is not obscene, or it not done in any public place, or the song recited or uttered in or near any public place or that it causes no annoyance to others, no offence is committed ".

18.If the alleged act is obscene in a public, it falls under Section 294(a) and if any obscene words spoken or recitals, it shall fall under Section 294(b), it should have been done in a public place and on such an act, the others would have been annoyance or in other words annoyance to others is also to be proved by the prosecution.

19.The evidence of PW1 is sufficient enough to substantiate the charge for the offence under Section 294 - A & B as to the act committed by the accused in obscene manner in public place namely in the instant case, it is a park and hence, it is public place, like PW1 & PW2, general public are also annoyed by the act of the accused as described in the preceding paragraphs and hence, the words spoken to and as deposed by PW1 in the witness box satisfies all the ingredients of the Sub-Section A & B of Section 294 of IPC. Hence, in the public place the obscene act was done by the accused and he has also uttered obscene words to the annoyance of the other public and hence, the charge for the offence under Section 294-A & B of IPC are proved beyond reasonable doubt. A similar finding on difference analysis rendered by both the Courts below are hereby confirmed and it does not suffer from any irregularity or illegality warranting interference.

20.The Trial Court has also convicted the accused for the offence under Section 332 IPC. Admittedly, PW1/Police Officer has stated that the Criminal Law settled into motion by filing of Ex.P1/special report by PW1/Merugesan; Ex.P2/wound certificate of PW1, which was issued by PW3/Dr.Sakthidharan, wherein it has stated the injuries sustained by PW1 are simple in nature.



21. On a perusal of the records, this Court finds that PW1 and PW2 were not in official duty at the time of alleged scene of crime viz., public park and they were not said to have been discharging any official duty.

[D.Chattaiyah Vs. State of A.P AIR 1978 SC 1441]

Deterioration of official duty under Section 332 of IPC: In order to attract Section 332 of I.P.Code the intent to prevent or deter a public servant from discharging his duties as such public servant must be established. Therefore, when a public servant is assaulted in his office as a sequel to an earlier grudge and the assault had no real nexus or casual connection or consequential relation with the performance of the duty of the public servant, the accused cannot be convicted either under Section 332 or section 333 I.P.Code -

22. The accused was also charged for the offence under Section 186 of IPC. Taking into consideration the quantum of sentence that could be awarded and in the absence of any private complaint, final report for the offence under Section 186 of IPC on the police complaint, is not maintainable and therefore, this Court holds that the charge framed against the accused for the offence under Section 186 of IPC is not sustainable and accordingly, the same stands hereby vacated.

23. Both the Courts have acquitted the accused for the offence under Section 506(ii) of IPC.

24. After going through the evidence of PW1 and PW2 and the evidence of PW4, PW5 & PW6, this Court finds that version of PW1 suffers from material contradiction, amounts to exaggeration of a simple fact of the accused, who is said to be in a highly drunken stage as could be seen from the medical evidence of Doctor, who has issued Ex.P4/drunkenness certificate to that effect.

25. The accused was also charged for the offence under Section 34 E-1 of Pondicherry Police Amendment Act. Section 34 (1) of the PPA Act, deals with the act of nuisance in the public place and the same is punishable under Section 31 E-1 of PP Act. Hence, taking into consideration the fact that the ingredients of Section 332 of IPC are not made out, this Court is of the considered view that by reading of the medical evidence of PW3/doctor, who has issued Ex.P2/wound certificate to show that PW1 has sustained simple injury, the conviction laid under Section 332 of IPC is hereby converted into 323 of IPC and accordingly, fine of Rs.1,000/- is imposed. With regard to the charge for the offence under Section 34 E-1 of PP Act, this Court finds that fine of Rs.1,000/- imposed. Accordingly, the



conviction and sentence passed by the Trial Court is hereby modified and the revision petitioner is convicted for the offence under Section 323 IPC, 294 - A & B of IPC and Section 34 E-1 of PPA Act.

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26. When PW1 appears to have pushed by the accused, who was in a highly drunken stage found in the public park said to have uttered certain words and hence, this Court finds that in the push and pull between the accused and PW1, PW1 fell down and sustained minor injuries, except the above fact, the other versions of PW1 and PW2 which has not corroborated by any private witnesses viz., PW4, PW5 & PW6 who are especially sweeper, gardener & watchman of the public park of the scene of Crime and hence, I find that version of PW1 is highly exaggerated and accordingly, this Court holds that charge for the offence under Sections 332 of IPC are not made out and hence, accused stands acquitted of from those charges. In respect of the charge under Sections 294 - A & B of IPC and 34 E-1 of PP Act, the accused stands convicted .

27(a). From perusal of the evidence of P.W.1 and P.W.2 with that of the independent witnesses viz., PW4, PW5 & PW6 and the medical evidence of Doctors PW3 & PW7, I find that except the fact that the accused, who was inebriated condition, has found to have not put his pant zip after passing urine and such a drunken state found to be lying in the public park. When P.W.1 and P.W.2 police constables wanted to move the accused from the public park, it appears that P.W.1 was pushed by the accused, who was in highly drunken state in the public park said to have uttered certain words. This incident is squarely falls under Section 34 E-1 of the Pondicherry Police Amendment Act. However, it appears that the respondent police has chosen to file a charge sheet as if the accused has committed the offence under Sections 294-A & B, 186, 332, 506 (ii) IPC and Section 34 E-1 of the Pondicherry Police Amendment Act.

27(b). The Law is tool for social order. In order to maintain social order, the Law Enforcing Authority shall enforce the law, as codified by the Act. An act of a person when codified as an offence under the Act becomes crime. On occurrence of such crime, the law Enforcing Authority has to use the law to detect and prevent such a commission of the crime. It is called as use of law. When a false complaint is foisted against the person, who has not committed the offence, due to personal annoyance or personal enmity or with oblique motive, it amounts to misuse of law. While a person entrusted with law enforcement or having control with the law Enforcing Authority uses his power to suppress undefended person or his personal enemy, the same amounts to abuse of law.



27(c).The instant case falls under the third category as stated supra as the action on the part of the Pondicherry police is deprecated and condemned.

28.For the reasons assigned therein, the accused is acquitted for the alleged offence under Section 186 of IPC as charge has not made out and so also for Section 332 of IPC; the conviction passed by both the Courts below under Sections 294 A & B of IPC, 34 E-1 of PPA Act are hereby confirmed since the fine amount is already paid for the offence under Section 332 IPC which was convert into one under Section 323 of IPC, the fine amount already paid shall stands adjusted therefor. Since the sentence is passed under Section 294 A & B of IPC no separate sentence is passed under Section 34 E-1 of PP Act.

29.Accordingly, Criminal revision case is partly allowed to the limited extent indicated above. Consequently, connected Miscellaneous Petitions is closed.

Sd/-

Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

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To:

1.The III Additional Sessions Judge, Puducherry.

2.-do-Thro' The Principal Sessions Judge,
Puducherry.

3.The Chief Judicial Magistrate at Puducherry.

4.The Station House Officer,
Grand Bazaar Police Station,
Puducherry.

5.The Public Prosecutor (Pondecherry).

+1cc to Mr.B.Baskaran, Advocate, S.R.No.37256

Cr1.R.C.No.965 of 2015

SJ(CO)
CB(23/08/2021)