



BAIL SLIP

The Petitioner/ Accused namely Vijayarajan S/o.Ramamoorthy was directed to released on bail as per order of this Court dated 04.04.2016 and made in CRL.MP.3842 of 2016 in Crl.R.C.No.574 of 2016 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.R.C.No.574 of 2016

Vijayarajan ... Petitioner/Single
Accused

Vs.

The State represented by
The Inspector of Police Station,
Virunchipuram Police Station,
Vellore District.
(Crime No.109 of 2009)

... Respondent/Complainant

PRAYER: This Criminal Revision Case has been filed under Section 397 and 401 of Cr.P.C to call for the records and to set aside the order passed by the learned I Additional District and Sessions Judge, Vellore, Vellore District, in Crl.A.No.125 of 2012, dated 21.01.2016 confirming the order of conviction and sentence passed in C.C.No.13 of 2011, by the learned Judicial Magistrate No.IV, Vellore, Vellore District, dated 05.07.2012.

For Petitioner : Mr.E.Kannadasan

For Respondent : Mr.S.Vinoth Kumar
Additional Public Prosecutor

O R D E R

The convicted sole accused is the revision petitioner herein.

2.This Criminal Revision Case is filed to challenge the order of conviction and sentence passed by the learned I Additional District and Sessions Judge, Vellore, Vellore District in Crl.A.No.125 of 2012, dated 21.01.2016, confirming the conviction and sentence passed by the learned Judicial Magistrate No.IV, Vellore, Vellore District in C.C.No.13 of



2011, dated 05.07.2012, wherein, the learned Judge has convicted the accused for the offence under Section 4 of the Tamil Nadu Prohibition Harassment of Women Act, 1998 and sentenced him to undergo three years rigorous imprisonment and to pay a fine of Rs.2,500/-, in default to undergo three months simple imprisonment.

3(i).The respondent police has registered a complaint in Crime No.109 of 2009, alleging that on 17.03.2009 at about 11.00 a.m., in Sivam Clinic, which belonging to the accused situated at China Thellur Village, Usur, when the witness Geetha aged 32 years had gone for treatment for her abortion, the accused who is neither registered his name in the Indian Medical Counsel nor under the Tamilnadu Private Clinical Establishment Regulation Act 1997, by posing himself as a qualified Allopathy Medical Doctor, had given her allopathy injection.

3(ii).Thereafter, on the same day at about 7.00 p.m., in the same clinic, the accused asked the witness Geetha to remove her dress and asked her to lie over the bed and started touching her private part saying that there was no fluid. When the witness Geetha felt ashamed and tried to wake up from the bed, the accused stopped her from getting up from the bed by using criminal force by pressing her shoulders.

3(iii).In the course of same transaction on 18.03.2009 at about 8.00 a.m., the witness Ramesh/PW1, who is the husband of witness Geetha/PW2 along with his villagers went to the clinic of the accused and questioned him about his vulgar activities for which, the petitioner/ accused criminally intimidated them by showing scissor. Thereby, the accused has committed the offences under Section 336 of IPC and Section 15(3) of the Indian Medical Counsel Act, Section 3 read with Section 8 of the Tamilnadu Clinical Establishment (Regulation) Act, 1997, Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act 1988 and Section 506(ii) of IPC.

4.Thereafter, PW1 gave a complaint before the respondent police and the same was registered in Crime No.109 of 2009, and after completing investigation laid charge sheet for the above said offences before the learned Judicial Magistrate No.IV, Vellore, Vellore District and the same case was taken up on file as C.C.No.13 of 2011.

5.During the course of trial, on the side of the prosecution, P.W.1 to P.W.8 were examined and Exs.P1 to P4 were marked. On the side of the defence, no witness was examined and no document was marked.

6.The Trial Court, after hearing both sides, found this petitioner/accused not guilty for the offence under Section 336 IPC and Section 15(3) of the Indian Medical Counsel Act and Section 3 read with Section 8 of the Tamilnadu Clinical



Establishment (Regulation) Act, 1997 and Section 506(ii) of IPC and accordingly acquitted the petitioner/accused under Section 248(1) of Cr.P.C. But, at the same time found this petitioner/accused guilty for the offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 and convicted and sentenced him as stated supra.

7. Aggrieved against the said conviction and sentence, the accused had preferred an appeal in C.A.No.125 of 2012, before the learned I Additional District and Sessions Judge, Vellore, Vellore District and by an order dated 21.01.2016, the learned Judge has dismissed the appeal and confirmed the conviction and sentence passed by the trial Court. Hence, the Criminal Revision Case.

8. Heard both the counsels and perused the material placed on record.

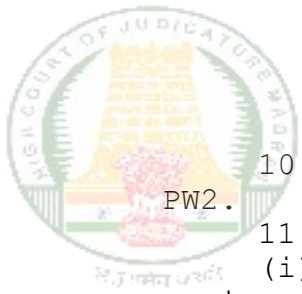
9. On a perusal of the records, the brief facts leading to file of the complaint by PW2 are :

(i) The petitioner is running a Private Clinic at Chinna Thellur Village, Usur in a house under the name of Sivam Clinic and he has registered as Medical Practitioner in Indian Board of Alternative Medicines. While so, on 17.03.2009 at about 11.00 a.m. when P.W.1 and his wife P.W.2 Geetha, had gone to the said Clinic for abortion and the petitioner/accused gave Allopathy injection to PW2 by telling that he was experienced in that line and had asked to her to come again in the evening on the same day.

(ii) As per his direction P.W.2/Geetha went to the clinic at about 07.00 p.m., and the petitioner/accused asked her to remove her dress and lie over the bed and started to touch her private part saying that there was no fluid and further, he told her that he has to insert his fingers into the private part to confirm the availability of fluid in order to start the abortion procedure. Since, she felt ashamed, she tried to wake up from the bed whereas, the petitioner/accused stopped her from getting up from the bed by using criminal force by pressing her shoulders.

(iii) In the course of the same transaction, on 18.03.2009 at about 08.00 a.m., when P.W.1/Ramesh, the husband of P.W.2/Geetha, went to the said Clinic along with his villagers and questioned the petitioner/accused about his vulgar activities and the accused had threatened them by saying that he will do them away by showing scissor. Hence, PW1 preferred a complaint before the respondent police.

(iv) On receipt of his complaint, the respondent police has registered a case against the petitioner/accused in Crime No.109/2009 for the offence under Sections 336, 506(ii) IPC, Section 4 of Tamil Nadu Prohibition Harassment of Women Act 1998, Section 15(3) of the Indian Medical Council Act and Sections 3 & 8 of the Tamil Nadu Clinical Establishment (Regulation) Act 1997.



10. PW2 is the wife of PW1. PW3 is the mother in-law of PW2.

11. The facts of the prosecution in brief are:

(i). PW2/Geetha already got two female children. While so, again she conceived. Hence, on 17.03.2009 at about 11.00 A.M., PW1 & PW2 approached the petitioner/accused for aborting fetus and the petitioner/accused after injecting medicine to PW2, advised her to come back at 7.00 O' clock for abortion. Accordingly, at 7.00 p.m., PW2 went to the Clinic of the petitioner/accused along with PW3 and PW2 alone was allowed inside the Chamber of the petitioner/accused and the petitioner/accused asked PW2 to remove the dress and it was refused by PW2. However, the petitioner/accused forcefully touched the vaginal part of PW2 and told as follows:

"பசை இருந்தால் தான் செக் பண்ண முடியும் என்று கூறினார்".

and immediately PW2 came out from the Chamber and informed the illegal behaviour of the petitioner/accused to her mother-in-law/PW3.

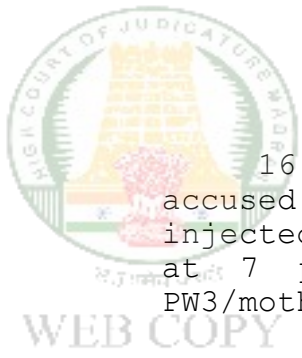
(ii) It is also the case of the prosecution that on the next day morning when PW1 to PW3 came to the petitioner's clinic and enquire him regarding his illegal activities, the petitioner/accused has threatened the witnesses. Hence, they have filed a complaint before Virinchipuram Police Station.

12. The suggestive case of the defence is totally different.

13. It is specifically suggested to PW1 & PW2 that the accused has discharged his duty as a professional Doctor when a patient has come for abortion except in connection with the said complaint he has not done anything. Since the accused/doctor had given injection to PW2, the witnesses opened a quarrel, inturn they caused damages to the revision petitioner's vehicle and also to the articles in the Clinic and hence, the revision petitioner gave a complaint against PW1, PW4 and PW5 and the same was registered in Crime No.110 of 2009 for offence under Sections 147, 148, 427, 294(b), 323 506(ii) of IPC. Since, those prosecution witnesses caused damages to the vehicle of the revision petitioner and the articles in the Clinic, in order to escape from the clutches of law, they have preferred a false complaint against this revision petitioner in Crime No.109 of 2009.

14. Except the charge under Section 4 of the Tamil Nadu Prohibition Harassment of Women Act 1998, the petitioner/accused was acquitted of all other charges.

15. Admittedly, PW1 is the husband of PW2 and he is only a hearsay witness and he has deposed that when PW2 approached the accused for abortion of her pregnancy, the accused injected her Allopathy injection and advised her to come again at 7 p.m. on the same day.



16.PW2/victim deposed that when she had approached the accused for abortion of her pregnancy, the accused had injected her Allopathy injection and had advised her to come at 7 p.m. in the evening. Further, she deposed that PW3/mother-in-law of PW2 also accompanied her in the evening.

17.The evidence of PW3 was that PW2 came out of the clinic by shouting and according to PW2, the accused behaved with her indecently by saying "அந்த டாக்டர் என்னிடம் ஆபாசமாக நடந்துகொண்டார் என்றும் நான் எனது கணவருடன் எத்தனை முறை படுக்கிறாய் என்று மருத்துவக் கேட்டதாகவும், அந்த டாக்டர் அசிங்கமாக நடந்துகொண்டதாக என்னிடம் கூறினார்."

18.The Trial Court has believed the evidence of PW2 and laid the conviction as stated supra and both the Courts below have held that the charge under Section 15(3) of the Indian Medical Council Act is not made out.

19.It is not the case of PW2 that the accused had touched her inappropriately. PW2 went along with her parties to abort the third pregnancy which she wanted in the absence of her husband, presence of PW3/mother-in-law of PW2 and the same was neither mentioned in the complaint nor spoken to with the Investigating Officer assumes significance and causes doubt as to the very presence of PW3 as projected by the prosecution. In the absence of any whispering in complaint that PW3 accompanied PW2, I find that version of PW2 suffers from embellishment amounting to material contradiction as to the presence of PW3.

20.It is a specific evidence of PW2 that there were two hospital staffs working at the time of the occurrence. For the reasons best known, the Investigating Officer neither examined them nor recorded any statements from them assumes significance.

21.It remains to be stated that the prosecution has not produced any medical record to show that PW2 was pregnant at the time of the occurrence. The counter case given by the accused against PW1, PW4 & PW5 in Crime No.110 of 2009 appears to have been closed as per the submissions of the learned Additional Public Prosecutor. Even to go by the face value of the evidence of PW2, it does not fall under the harassment as defined under Section 2(a) of the Act, since the accused is a doctor and he has already been acquitted from the charge under Section Section 15(3) of the Indian Medical Council Act and also the Tamilnadu Private Clinical Establishment Regulation Act 1997 as stated above. Hence, the abortion cannot be termed as the harassment within the definition under Section 2 (a) of the Act.

22.Further, from the evidence of PW2/victim girl, the accused has done his duty in connection with the abortion for



which PW2 approached him. Even to go by the face value of the version, I do not find the act of the accused falls under the category of Section 2(a) of the Act to term it as harassment and hence, I find that the evidence of PW2 is not trustworthy with regard to the presence of PW1 and PW3. In the absence of any positive evidence besides the version of PW2/Geetha suffers from infirmity since she has committed improvement in the nature of the embellishment amounting to the material contradictions viz., the presence of PW1 and PW3 and hence, I find that it is totally unsafe to rely upon the evidence of PW2 and in view of the suggestive case, it is found to be more probable. Accordingly, the conviction laid under Section 4 of the Tamil Nadu Prohibition Harassment of Women Act 1998 is hereby unsustainable in law and the conviction and sentence passed by the Courts below is hereby set aside.

23. Accordingly, this Criminal Revision Case stands allowed and the order of conviction and sentence passed by the learned I Additional District and Sessions Judge, Vellore, Vellore District in Crl.A.No.125 of 2012, dated 21.01.2016, confirming the conviction and sentence passed by the learned Judicial Magistrate No.IV, Vellore, Vellore District in C.C.No.13 of 2011, dated 05.07.2012, is hereby set aside. The fine amount is ordered to be returned. Bail bonds stands cancelled.

Sd/-

Assistant Registrar

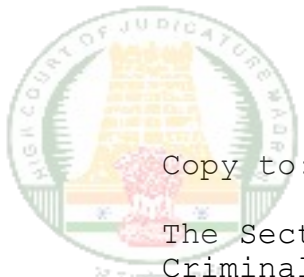
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Sub Assistant Registrar

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To

- 1.The First Additional District and Sessions Judge,
Vellore, Vellore District.
- 2.The Chief Judicial Magistrate,
Vellore.
- 3.The Judicial Magistrate No.IV,
Vellore, Vellore District.
- 4.The Inspector of Police Station,
Vellore District.
- 5.The Public Prosecutor,
High Court, Madras.



Copy to:

The Section Officer,
Criminal Section,
High Court, Madras.

+1cc to Mr.E.Kannadasan, Advocate SR. No.56721

Cr1.R.C.No.574 of 2016

KG (CO)
PR (02/12/2021)