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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	:	14.07.2021
Pronounced on	:	02.08.2021

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Criminal Revision Case No.411 of 2021 and
Crl.M.P.Nos.6664 and 6666 of 2021

Sakthivel
S/o.Anniyappan

... Petitioner/Appellant/Accused No.1

Vs.

State Rep by
Inspector of Police
Bargur Police Station
Krishnagiri
Crime No.201 of 2014

... Respondent/Respondent/Complainant

Prayer : Criminal Revision filed under Section 397 and 401(1) of Criminal Procedure Code, praying to allow the revision petition and set aside the Judgment dated 23.12.2020 made in Crl.A.No.37 of 2018 on the file of the learned Principal District and Sessions Judge, Krishnagiri, confirming and modifying the order dated 07.08.2018 in C.C.No.97 of 2014 on the file of the Judicial Magistrate No.1, Krishnagiri against the petitioner.

For Petitioner : Mr.S.Ranjith Kumar

For Respondent : Ms.S.Sugendran
Government Advocate (Crl.Side)

J U D G M E N T

This Criminal Revision has been filed against the Judgment dated 23.12.2020 made in Crl.A.No.37 of 2018 on the file of the learned Principal District and Sessions Judge, Krishnagiri, confirming and modifying the order dated 07.08.2018 in C.C.No.97 of 2014 on the file of the learned Judicial Magistrate No.1, Krishnagiri.

2. The respondent police registered the case against the petitioner herein and yet another accused in Crime No.201 of



2014 for the offences punishable under Sections 294(b), 341, 354 and 506(i) IPC. After completing investigation, the respondent police laid charge sheet before the Judicial Magistrate-I, Krishnagiri. and the learned Magistrate taken up the charge sheet on file in C.C.No.97 of 2014 and after completing the formalities framed charges against the accused for the offences punishable under Sections 294(b), 341 and 506(i) IPC and also under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act 2002 and the petitioner is arrayed as A1.

3. After completing the trial and hearing the arguments advanced on either side, the learned Magistrate finding that the prosecution has failed to prove the case for offences punishable under Sections 294(b), 341 and 506(i) IPC beyond all reasonable doubt, had acquitted both the accused. However, the the learned Magistrate found them guilty for the offence punishable under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act and convicted and sentenced them to undergo two years simple imprisonment each and to pay fine of Rs.10,000/- each, in default to undergo one month simple imprisonment. Further, the trial Court ordered that the fine amount of Rs.20,000/- to be paid to the P.W.1 victim.

4. Challenging the said Judgment of conviction and sentence, both the accused had filed an appeal before the Principal District and Sessions Judge, Krishnagiri. The learned Principal and District and Sessions Judge, Krishnagiri, taken up the case on file in CrI.A.No.37 of 2018 and after hearing the arguments advanced on either side, allowed the appeal as against the second appellant therein and set aside the conviction and sentence passed against the second appellant and acquitted him. However, dismissed the appeal as against the first appellant therein / the petitioner herein and modified the sentence from two years simple imprisonment to one year simple imprisonment by order dated 23.12.2020.

5. Challenging the Judgment of the learned Principal District and Sessions Judge, Krishnagiri, in CrI. A.No.37 of 2018, the 1st accused has filed the present revision petition before this Court.

6. The learned Counsel for the petitioner would submit that there is a case in counter. Initially the defacto complainant and his relatives attacked the petitioner herein. Therefore, the petitioner had lodged a complaint against the defacto complainant whereas, the police did not register the case and thereby, the petitioner had filed a private complaint before the Judicial Magistrate-I, Krishnagiri and the learned Magistrate had taken up the complaint in C.C.No.114 of 2014. In the meantime, the police registered the case against the



appellant and yet another accused on the complaint given by the defacto complainant and after completion of investigation, laid charge sheet before the learned Judicial Magistrate-I, Krishnagiri. The learned Magistrate taken up the charge sheet on file in C.C.No.97 of 2014 and after completion of trial, convicted both the accused. Aggrieved by the same, both the accused filed an appeal before the Principal District and Sessions Judge, Krishnagiri. The learned Sessions Judge after hearing both sides, allowed the appeal as against the second appellant therein and dismissed the petition as against the first appellant / petitioner herein. However, modified the sentence imposed on the first appellant therein / petitioner herein from 2 years simple imprisonment to one year simple imprisonment. He would submit that during the pendency of the appeal before the Sessions Court, the appellant and the victim had entered into a compromise and both parties had signed the agreement of compromise dated 11.09.2019 and based on the compromise, the petitioner withdrew the private complaint filed against the defacto complainant and others in C.C.No.114 of 2014 on the file of the Judicial Magistrate-I, Krishnagiri. However, he did not withdraw the appeal in CrI.A.37 of 2018. The learned counsel would submit that the learned Magistrate on finding that the prosecution had failed to prove the charges punishable under Section 294(b), 341 and 506(i), beyond all reasonable doubt, had acquitted both the accused from the said charges however, convicted them for the offence punishable under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act. Against which, both the accused filed an appeal before the learned Principal District and Sessions Judge, Krishnagiri, and the learned Sessions Judge independently appreciated the evidence on record and found the second appellant therein not guilty and thereby, allowed the appeal and set aside the conviction and sentence as against the second appellant therein. Further, the learned Sessions Judge, dismissed the appeal as against the first appellant / the petitioner herein, however modified the conviction from two years simple imprisonment to one year simple imprisonment which, itself shows even the learned appellate Judge disbelieved the evidence of the prosecution and thereby, acquitted the second appellant however, failed in appreciating the very same evidence as against the first appellant/ the petitioner herein and thereby, confirmed the conviction.

6.1. The learned Counsel for the petitioner would further submit that the victim was examined as P.W.1 and she has stated that in a public place i.e. in a bus stop, both the accused waylaid her and pulled her Saree and scolded her with filthy language and threatened her with dire consequences. Further, she has stated that at the time of occurrence, 7 to 8 persons were present at the scene of occurrence apart from her relatives and grand father and grand mother whereas, the



prosecution has not examined any independent witnesses and examined only P.W.2 and P.W.3 who are the close relatives of the victim. P.W.4 is the mahazar witness and P.W.5 to P.W.7 are official witnesses. Though there were independent witnesses at the scene of occurrence, the prosecution has chosen to examine only the close relatives and interested witness. Therefore, the non examination of the independent witnesses are fatal to the case of the prosecution. Further, the trial Magistrate as well as the appellate Judge disbelieved the evidence of the prosecution for the other charges and only believed for the offences under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act. He would submit that they are all close relatives and due to some misunderstanding, a false complaint has been lodged against the accused and subsequently, they entered into compromise and thereby, the petitioner withdrew the private complaint filed by him. Therefore, on merit as well as in the interest of justice, the Judgment of conviction and sentence as against the revision petitioner is liable to be set aside.

7. The learned Government Advocate (Crl. Side) in reply would submit that as stated by the learned Counsel for the petitioner there is no case in counter. He would submit that admittedly the private complaint preferred by the petitioner in C.C.No.114 of 2014 on the file of the learned Judicial Magistrate-I, Krishnagiri, was dismissed as withdrawn by order dated 25.07.2019 based on the withdrawal petition filed by the petitioner. However, the order does not indicate anything as if, the matter has been compromised between the parties.

8. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. Side) appearing for the State and perused the materials available on record.

9. Perusal of records before the Magistrate shows, in order to prove the case of the prosecution, 7 witnesses were examined and 5 documents were marked. Out of the 7 witnesses, the victim was examined as P.W.1 and her Junior Paternal Father was examined as P.W.2 and her Cousin has been examined as P.W.3. P.W.4 is the mahazar witness and the other witnesses i.e. P.W.5 to P.W.7 are police officials.

10. Both the Courts below have appreciated the very same evidence of the prosecution witnesses. However, the trial Court convicted both the the accused and the appellate Court acquitted one of the accused A2 and modified the conviction as against A1.

11. Though the learned Counsel for the petitioner submitted that no independent witnesses were examined, both the Courts



12. The revision has been filed against the judgment of the appellate Court. This Court as a revisional Court cannot re-appreciate the entire evidence and the Court has to find out as to whether there is any perversity in the Judgments of the Courts below in appreciating the evidence.

14. Further, the petitioner himself has admitted that there was a previous enmity between the parties and he had also filed a private complaint against the victim and others. The allegation against the petitioner is that harassing a woman in a public place. Both the Courts i.e. the trial Court as well as the appellate Court as fact finding Court, have appreciated the evidence of the victim and convicted the accused. As a revision Court, this Court, does not find any perversity in the appreciation of evidence. The appellate Court has found that there was a specific overt act as against the first appellant / the petitioner herein and thereby, the appellate Court confirmed the conviction as against the petitioner and the the appellate Court has found no specific overt act as against the second appellant and thereby, acquitted the second appellant therein. However, reading of the evidence of P.W.2 shows that both the accused pulled the Saree of P.W.1. whereas, P.W.3 has stated that the petitioner alone pulled the Saree of P.W.1. Therefore, there are contradictions between the prosecution witnesses. Though the appellate Court as a fact finding Court had acquitted the second appellant therein, however confirmed the conviction as against the first accused / petitioner herein by appreciating the very same evidence.

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16. P.W.2 and P.W.3 have clearly stated that both the accused scolded the victim with filthy language and threatened her with dire consequences. Further, P.W.2 has stated that both the accused had pulled the Saree of the victim whereas, P.W.3 has stated the petitioner herein had pulled the Saree of the victim.

17. Though the Magistrate acquitted both the accused from the other charges stating that the prosecution has not proved the case beyond all reasonable doubt however, convicted them for the offence punishable under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act. Thereafter, the appellate Court acquitted the second appellant therein and confirmed the conviction as against the first appellant therein / the petitioner herein and modified the sentence by appreciating the very same evidence available on records. Though in this case, 7 to 8 independent witnesses were present, but none of them were examined. P.W.3 and P.W.4 are relative witnesses and they are interested witnesses. Further, there is contradiction as to whether both the accused pulled the Saree of the victim or A1 alone had pulled the Saree or A2 alone had pulled the Saree. There is a doubt and the prosecution has not proved its case beyond all reasonable doubt. If two views are possible, the benefit should go to the accused. In cases of this nature, the Courts have duty to make deeper scrutiny of evidence and decide acceptance or otherwise. Therefore, in this circumstances, this Court finds that there is perversity in the appreciation of evidence. Moreover both the parties have amicably settled the dispute during the pendency of the appeal itself.

18. Therefore, in the interest of justice, this Criminal Revision case is allowed. The Judgment dated 23.12.2020 made in Crl.A.No.37 of 2018 on the file of the learned Principal District and Sessions Judge, Krishnagiri, confirming the conviction and modifying the sentence dated 07.08.2018 in C.C.No.97 of 2014 on the file of the Judicial Magistrate No.1, Krishnagiri, is set aside. Consequently, connected Miscellaneous Petitions are closed.

19. Bail bond if any executed by the petitioner shall stand canceled.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar



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To

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1. The Principal District and Sessions Judge,
Krishnagiri,
2. The Judicial Magistrate No.1, Krishnagiri
3. The Inspector of Police
Bargur Police Station, Krishnagiri
4. The Public Prosecutor Officer, High Court, Madras.
5. The Section Officer, Criminal Section, High Court, Madras.

+1cc to Mr.S.Ranjithkumar, Advocate Sr.38386

Criminal Revision Case No.411 of 2021

pm[co]
srg 23/08/2021