

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.02.2021

CORAM :

THE HON'BLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Cr1.R.C.No.1164 of 2014

E.Raj

S/o.Eruthayam

..Revision Petitioner/Accused

Vs.

State represented by

Inspector of Police

R-10, M.G.R. Nagar Police Station

Chennai

(Crime No.100 of
2012)

... Respondent/Complainant

Prayer: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C. to call for the records against judgment dated 09.10.2014 in C.A.No.182 of 2013 on the file of the Metropolitan VI Additional Sessions Court, Chennai, against C.C.No.558 of 2012 on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai 600 015, acquit and discharge the Revision petitioner.

For Petitioner : Mr.Manikandan
for Mr.S.Manokaran

For Respondent : Mr.C.Iyyappa Raj
Additional Public Prosecutor

ORDER

(The case has been heard through video conference)

The Criminal Revision has been filed seeking to call for the records against judgment dated 09.10.2014 in C.A.No.182 of 2013 on the file of the Metropolitan VI Additional Sessions Court, Chennai, against C.C.No.558 of 2012 on the file of the XXIII Metropolitan Magistrate, Saidapet, Chennai 600 015, to acquit and discharge the Revision petitioner.

2.The sum and substance of the petitioner's case is as follows: P.W.1 Suryanarayanan was working as a pharmacist in K.K. Nagar Government Hospital Out Patient Section. While he was on duty, on 15.01.2012, the petitioner / accused had come to the pharmacy and asked for certain medicines and when P.W.1 refused to give the medicines without prescription, the accused had abused him in filthy language, threatened to do away with him and then left the place of occurrence. Based on

the complaint given by P.W.1, a case was registered against the accused in Crime No.100 of 2012 for the offences under section 294(b), 353 and 506(1) I.P.C. After completion of investigation, the final report was filed before the Learned XXIII Metropolitan Magistrate, Saidapet, Chennai and on the appearance of the petitioner / accused, he was furnished copies of the relevant documents under Section 207 Cr.P.C.

3. Thereafter, the case was made over to the learned XXIII Metropolitan Magistrate, Saidapet, Chennai and taken cognizance in C.C.No.558 of 2012. The substance of the case was explained to the petitioner / accused and the petitioner / accused denied the charges against him and claimed to be tried.

4. In the trial, in order to prove the guilt of the petitioner / accused, the prosecution examined P.W.1 to P.W.8 on its side and marked documents Ex.P1 to Ex.P5. During the trial, P.W.1 had deposed that he is a pharmacist at K.K. Nagar Government Hospital in Outpatient Section and that on 15.01.2012 while he was on duty the accused had come to the hospital and demanded him to give certain medicines without prescription, when P.W.1 refused to give any medicines without any prescription, the accused got enraged and abused P.W.1 in filthy language, thereby, committed the offence under section 353 I.P.C. The accused had threatened the P.W.1 saying that he should not ask for prescription from him and also abused him in filthy language and criminally intimidated him. Since P.W.1 was on duty, the occurrence was reported to his superiors through proper channel and thereby a complaint was given to the respondent police. The evidence of P.W.1 was corroborated by P.W.2 who was the doctor, P.W.4 and P.W.7 who were the nurses on duty in the hospital at the time of occurrence. P.W.3 is the witness for the Mahazor, P.W.5 is an individual witness examined and he has turned hostile. P.W.6 is the witness for observation Mahazor, P.W.8 who is the Sub Inspector of police in the respondent police station has deposed that while he was on duty viz. 11.01.2012, he had received a complaint from P.W.1, thereby he issued CSR and after conducting preliminary enquiry, he found that the incident was true and registered a case in Crime No.100 of 2012 for the offences under section 294(b), 353 and 506(2) IPC. F.I.R was marked as Ex.P5, and after the investigation, he filed the final report. On the side of the defence, no oral and documentary evidence was marked by the Trial Court.

5. The Trial Court taking into consideration the evidence had acquitted the petitioner for the offence under section 294 (b) IPC. Further, the Trial Court found the petitioner / accused guilty for the offence under section 506(1) IPC, convicted the petitioner and ordered him to pay a fine of Rs.500/- and in default to undergo one month Simple Imprisonment and for the offence under Section 353 IPC, the Trial Court convicted the petitioner and ordered to pay a fine

of Rs.500/- and in default to undergo one month simple imprisonment. In respect to the offence under Section 294(b), the petitioner was acquitted.

6. Aggrieved by the said conviction order, the petitioner had preferred C.A.No.182 of 2013 and the Appellate Court while confirming the judgment of the Trial Court had wrongly presumed that the petitioner was sentenced to undergo one month simple imprisonment for the offence under section 353, 506(1) IPC and partly allowed the C.A.No.182 of 2013 and set aside the order of the sentence to undergo simple imprisonment and confirmed the fine imposed on the petitioner, against which the present revision has been filed.

7. The learned counsel appearing for the petitioner would submit that the alleged occurrence took place on 15.01.2012, whereas, the F.I.R. was registered only on 21.01.2012 and both the courts below failed to take into consideration the enormous delay in registering the case. He would further submit that though the Trial Court has imposed only a fine amount of Rs.500/-, the Appellate Court on wrong presumption without application of mind, observed as though the petitioner was sentenced to undergo simple imprisonment for one month for the offence under section 353 IPC and 506(1) IPC, partly allowed the C.A.No.182 of 2013 by setting aside the sentence and confirmed the fine amount imposed on the petitioner.

8. Per contra, learned Government Advocate (Crl. Side) would submit that the Courts below taking into consideration the evidence on record and finding that the complaint had been given on 15.01.2012 after getting approval of the higher officials, and that a case in CSR was registered on the same day and finding that the F.I.R. had been registered after the preliminary enquiry, had categorically held that there had been no delay on the part of the prosecution or P.W.1.

9. Further, learned Government Advocate would submit that both the Courts below, on facts found that the petitioner was guilty under Section 353 and 506(1) IPC. He would further submit that the Appellate Court, wrongly presumed that the petitioner was sentenced to undergo one month simple imprisonment for the offence under section 353 IPC and 506(1) IPC and partly allowed the appeal in C.A.No.182 of 2013 by setting aside the sentence and confirmed the payment of fine imposed on the petitioner and in default to undergo simple imprisonment for one month. He would further submit that the respondent on facts, proved the case beyond reasonable doubt and there is no infirmity, illegality or perversity in the order passed by the Courts below to warrant interference.

10. Heard the learned counsel appearing for the Revision Petitioner and the learned Government Advocate (Crl. Side). Perused the materials placed on records.

11.Perusal of the records show that the evidence of P.W. 1 had been corroborated by P.W. 2 (Doctor), P.W. 4 and P.W. 7 (nurses) who were present on duty at the relevant point of time. They are the eye witnesses to the occurrence. Further the case of the prosecution has been proved by evidence of P.W.3, P.W.6. The investigating officer viz. P.W.8 had deposed that based on the complaint, CSR was issued on the same day. Thereafter, preliminary enquiry was conducted, after finding that the incident was true had registered a case. This Court doesn't find that there had been any delay and there is no infirmity or illegality with regard to the facts as observed by both the Courts below. Further the finding of the Appellate Court that the petitioner was convicted and sentenced to undergo one month simple imprisonment for the offence under section 353 and 506(1) IPC is wrong and erroneous. Needless to say that the observation by the Appellate Court with regard to the same needs to be set aside. On other aspects there is no merit in the Revision.

12.This Criminal Revision Case stands dismissed accordingly.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1.The VI Additional Sessions Judge,
Chennai

2.The XXIII, Metropolitan Magistrate Court
Saidapet,
Chennai 600 015

3.The Inspector of Police
Inspector of Police
R-10, M.G.R. Nagar Police Station
Chennai

4.The Public Prosecutor
High Court of Madras
Chennai 600 104.

CRL.R.C.No.1164 of 2014

SSN(CO)
CB(26/02/2021)