

Bail Slip

The Petitioner/Accused namely Chandrasekar @ Bhagavan S/o. Venkatesappa was directed to be released on bail by order of this Court dated 07.02.2017 made in Crl.M.P. No. 1790/2017 in Crl.R.C. No. 158/2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2021

CORAM

THE HON'BLE Ms. JUSTICE R.N.MANJULA

Crl.R.C.No.158 of 2017

Chandrasekar @ Bhagavan

...Petitioner/Accused

Vs.

State rep by

The Sub Inspector of Police,

All Women Police Station,

Hosur,

Krishnagiri District,

Crime No.9 of 2011.

...Respondent/Complainant

Criminal Revision Case filed under Section 397(1) and 401 of Cr.P.C. seeking to call for the records pertaining to the judgement dated 09.01.2017 in C.A.No.26 of 2014 passed by the Additional District and Sessions Judge, Hosur, confirming the judgement dated 28.04.2014 in C.C.No.55 of 2011 passed by the Judicial Magistrate - I, Hosur convicting the petitioner under Section 4 of the Prohibition of Harassment of Women Act, by modifying the sentence to undergo simple imprisonment for six months instead of rigorous imprisonment of 3 years and modifying the fine to pay Rs.10,000/- instead of Rs.1,000/- and to set aside the same.

For Petitioner : Mr.A.Balamurugan

For Respondent : Mr.A.Gopinath
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Case has been preferred challenging the judgement of the learned Additional District and Sessions Judge dated 09.01.2017 passed in C.A.No.26 of 2014.

2. The case of the prosecution is that on 13.05.2011 at about 10 am when the defacto complainant (P.W.1) went to Shiva temple at Berigai, the accused came behind her and showed indecent gesture meaning (I need you). The gesture was made in front of the public and the defacto complainant got ashamed and intimidated. On the complaint given by the defacto complainant, the case has been registered in Crime No.9 of 2011 of AWPS under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998 and the F.I.R. was prepared by P.W.11 Chitra, Inspector of Police. She took up the case for investigation and went to the place of occurrence, prepared the observation Mahazar and rough sketch in the presence of witnesses. After examining the witnesses, she arrested the accused and sent him for remand. After completing the investigation, a charge sheet was filed under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act.

3. After the case was taken on file and after observing all the legal mandates and considering the materials available on record, the learned trial Judge framed the charges against the accused under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act. When the accused was questioned, he denied the charges and claimed to be trialled.

4. During the course of the trial, on the side of the prosecution, 11 witnesses were examined as P.W.1 to P.W.11 and 4 documents were marked as Exs.P1 to P4. On the side of the accused, no witness was examined and no document was marked.

5. After concluding the trial and on consideration of the evidence available on record, the learned trial Judge found the accused guilty under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act and convicted and sentenced the accused to undergo 3 years rigorous imprisonment and imposed a fine of Rs.1,000/- in default to undergo 3 months simple imprisonment.

6. Aggrieved over that, the accused preferred an appeal before the Sessions Court by challenging the judgement of the trial Court in C.A.No.26 of 2014 and the said criminal appeal was partly allowed and the sentence was modified to 6 months simple imprisonment and the fine was enhanced to Rs.10,000/-.

Aggrieved over the said judgement, the accused has preferred this present Criminal Revision Case.

7. Heard the learned counsel for the petitioner/accused and the learned Government Advocate (Criminal Side) for the respondent Police.

8. The learned counsel for the petitioner/accused submitted that the evidence on record does not prove the guilt of the accused for the offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act. The Courts below have omitted to consider the material contradictions in the evidence of the prosecution witnesses and failed to give benefit of doubt. There is also a delay in registering the F.I.R. For the occurrence said to have happened on 13.05.2011 and the complaint has been given only on 02.06.2011.

9. The learned Government Advocate (Criminal side) appearing for the respondent Police submitted that in the offences of this nature, the defence of the defacto complainant is of prime importance and she has deposed evidence in the cogent and consistent manner. The other witnesses who were present at the scene of occurrence have also corroborated the evidence of P.W.1 and hence, this revision has to be dismissed.

10. The specific case of the prosecution is that the accused was in the habit of harassing P.W.1 and he has been warned on several occasions by the husband of P.W.1 and her uncle P.W.5; despite that, on the day of occurrence also the accused followed P.W.1 and showed indecent gestures. P.W.1 has stated about the occurrence during her chief examination. Her evidence would reveal that the occurrence had taken place in public view. P.W.1 has stated that she used to mind the grocery shop of her husband during his absence and during that time also, the accused would cross her shop and show annoying gestures. He was also in the habit of stalking her wherever she went.

10.1 On the day of occurrence, she had been to temple and the accused followed her. He was in the habit of telling to the children of P.W.1 that he was going to be their would be dad. Since the continuous harassment caused by the accused was shameful and stressful, the defacto complainant gave a complaint. The manner in which the accused was misbehaving, was brought to the knowledge of P.W.1's husband - P.W.2. P.W.2 has also stated in his evidence that he had warned the accused not to indulge in such activities. P.W.3 is the temple priest. He has deposed in his evidence that on the day of occurrence, he

suddenly heard P.W.1 screaming; when he saw there, the accused was running from that place; thereafter, he enquired P.W.1 and P.W.1 stated to him that the accused was misbehaving with her.

10.2 The nuisance caused by the accused was of such a serious nature and women did not feel confident to go to temples. P.W.1 has also stated that the women avoided to come to temple if the accused was present there. P.W.4 is also an eye witness who is having a grocery shop near the place of occurrence. She has stated in her evidence that she saw P.W.1 warning the accused on the day of occurrence. P.W.7, P.W.8 and P.W.9 are also aware of the annoying attitude of the accused and they had also deposed evidence that P.W.1 was harassed by the accused quite often.

10.3 The accused was a known person and he was also residing in the same village. Apart from the evidence of the victim and her family, other independent witnesses have also supported the case of the prosecution. The evidence of both the independent and affected witnesses are cogent and consistent. Therefore, I find no reason to disprove their evidence. P.W.1 and P.W.2 did not have any motive against the accused to foist a false case against him. The evidence narrated by P.W.1 and other witnesses are quite natural and appears to be realistic. The Courts below have rightly appreciated the evidence on record and come to the conclusion that the accused is guilty under Section 4 of the Tamil Nadu Prohibition of harassment of Women Act.

11. The 'Act of harassment' is defined under Section 2 (a) of the Tamil Nadu Prohibition of Harassment of Women Act as under:-

(a)"harassment" means any indecent conduct or act by a man which causes or is likely to cause intimidation, fear, shame or embarrassment, including abusing or causing hurt or nuisance or assault or use of force.

12. Indecent gesture shown by the accused at the time of occurrence would no doubt cause shame, embarrassment and the fear in the mind of the defacto complainant. The occurrence had occurred at a public place like temple and hence, the prosecution has proved that the accused had committed the offence of harassment as defined under Section 2(a) of the Tamil Nadu Prohibition of Harassment of Women Act.

13. However, at the conclusion of the arguments, the learned counsel for the petitioner stated that if this Court

prefers to dismiss the revision case, some indulgence should be shown in the matter of punishment. It is further submitted that there is no previous case pending against him.

14. It appears that the accused had been in prison for nearly two months and he has already paid a fine amount also. The accused is said to be the bread winner of his family. Taking into consideration all these factors, I feel that the sentence may be modified to the effect that he should be convicted and sentenced to undergo Simple Imprisonment for two months and imposed with a fine of Rs.20,000/- in default to undergo one month Simple Imprisonment. The fine amount already paid can be adjusted with the fine amount now imposed.

In the result, this Criminal Revision Case is partly allowed and the judgement of the learned Additional District and Sessions Judge dated 09.01.2017 passed in C.A.No.26 of 2014 is modified to the effect that the accused is convicted and sentenced to undergo two months Simple Imprisonment and a fine of Rs.20,000/- in default to undergo one month Simple Imprisonment.

Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate - I,

Hosur.

2. The Chief Judicial Magistrate,

Krishnagiri(for information)

3.The Additional District and Sessions Judge,

Hosur, Krishnagiri District.

4. The Sub Inspector of Police

All Women Police Station

Hosur, Krishnagiri District

5. The Superintendent, Central Prison
Vellore

6.The Public Prosecutor
High Court, Madras 104.

Copy to

The Section Officer

VR Section

High Court, Madras 104.

+1 CC to Mr.A.Balamurugan, Advocate sr 63848.

Crl.R.C.No.158 of 2017

GPL(CO)

SP(09/02/2022)