

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE OF RESERVING ORDER
30.07.2021

DATE OF PRONOUNCING ORDER
25.08.2021

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THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.R.C.NO.1597 OF 2017

Prabhu

.. Petitioner

Vs.

State Rep. by
The Inspector of Police,
Omerabad Police Station,
Vellore District.
(Crime No.201 of 2014)

.. Respondent

PRAYER : Petition filed under Section 397 read with 401 of the Criminal Procedure Code, to call for the records on the file of the learned III Additional Sessions Judge, Vellore @ Thiruppathur, Vellore District in Crl.A.No.4/2017 dated 18.09.2017 confirming the judgment in C.C.No.245/2015 on the file of the learned Additional District Munsif cum Judicial Magistrate, Ambur, Vellore District dated 20.12.2016 and set aside the judgment dated 18.09.2017.

For Petitioner : Mr. E. Kannadasan
For Respondent : Mr. R. Vinoth Raja,
Government Advocate

O R D E R

The matter is heard through "Video Conference".

2. The convicted sole accused is the revision petitioner herein. The accused was convicted for the offence under Sections 354 and 4 of Tamil Nadu Prohibition of Women's Harassment Act. Since both are similar in nature, the learned Magistrate had passed sentence only in Section 4 of the Tamil Nadu Prohibition of Women's Harassment Act and the same was confirmed in the appeal.

3. The respondent/police filed a final report before the learned Judicial Magistrate, Ambur, that the Inspector of Umarabad Police has laid the final report on the allegations that on 09.08.2014 morning at 5.15 when the witness Kalyani was



going to her work at Vadakarai road at Settu Coconut Grove Varrappu the accused Settu suddenly came behind the witness Kalyani and touched her shoulder and pulled her hand and told her to come with him and threatened the witness Kalyani. Hence, the witness got mental worries about the attitude of the accused. Thereby the accused have committed the offence punishable under Section 354 IPC and 4 of Women Harassment Act and 506(ii) IPC.

4. After perusing the material records and on hearing the counsel the learned Additional District Munsif cum Judicial Magistrate, Ambur had framed the charges against the accused under Section 354, 506(ii) and under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998.

5. On the side of the prosecution P.W.1 to P.W.6 were examined and Exs.P1 to P4 were marked. On completion of prosecution witnesses, the accused was questioned under Section 313 of Cr.P.C., for the incriminating materials appeared against him. The accused had totally denied the case of prosecution and on the side of accused no witness was examined and no exhibit was marked.

6. The trial Court after considering the evidence on record and the arguments of the counsel found guilty of the accused under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998. The accused convicted under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998 and sentenced him S.I, for three months with a fine of Rs.10,000/- IDSI for three months. The accused is acquitted from the charge under Section 506(ii) IPC in terms of 248(1) Cr.P.C.

7. The learned Magistrate has considered and held that the criminal intimidation under Section 506(ii) of IPC is not made out and accordingly, acquitted the accused. However, held that the prosecution has proved the charges under Section 354 of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act and accordingly, convicted the accused and passed sentence only in Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act.

8. The case of the prosecution is that the appellant / accused on 09.08.2014 at 5.15 am when the complainant had gone through coconut grove of one Settu the accused hold and pulled the hand of the complainant and called her to come and thereby the appellant/accused misbehaved and harassed her.



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9. The case of the defence is that to evade due payment of chit amount to the appellant, a belated false complaint was lodged against him. The lower Court ought to have rejected the uncorroborated testimonies of PWs. 1 to 5 and ought to have acquitted the appellant.

10. PW.1 is the victim girl, P.W.2 is neighbor, P.W.3 is her classmate. P.W.4 is the husband of P.W.1 and P.W.5 is the attester of the observation mahazar and P.W.6 is the Investigation Officer, who laid the charge sheet.

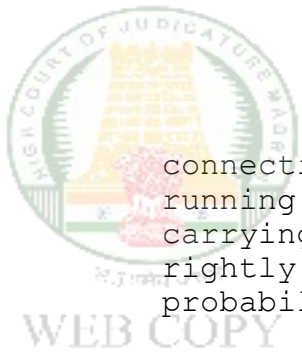
11. P.W.1 has deposed as to act of accused as stated in Ex.P1 complaint. Based upon the evidence of P.W.2 and P.W.3, the learned Magistrate has held that immediately after the incident they saw that the accused has misbehaved with P.W.1 by touching her shoulder and inviting her. The evidence of P.W.1 is clear to that effect.

12. The learned counsel for the revision petitioner would contend that P.W.1/victim girl has lodged a complaint/Ex.P1 on 11.08.2012, after two days of the alleged occurrence. Except P.W.1, other witnesses are only related witnesses, who came to know alleged occurrence and hence, they are all hearsay witnesses, could not support the case of the prosecution. As to the suggestive case of the defence, there was a chit fund contract between the parties and when the accused had asked to pay the amount, a false case has been foisted by the complainant.

13. In view of the clear and cogent evidence of P.W.1 to P.W.3, both the Courts below have concurrently held that the delay of 2 days in the matter of this nature is not fatal to the prosecution and further held that in the absence of any grudge against the accused, the evidence of P.W.1 is found to be acceptable.

14. The suggestive case of the defence is that the brother of the complainant had to pay chit fund to the accused and only to evade the same, the complainant has given the false complaint. It is not acceptable to say that in order to evade payment of chit money by the brother of the complainant, the complainant who is a married lady along with her husband had given a false complaint against the accused, could not be probable and hence, this Court finds that it is only an after thought to raise a defence.

15. Yet another issue is that though the defence theory has been projected by way of raising the plea that the accused is running a chit, in which the brother of the complainant is also a subscriber having money dues in payment of balance of chit amount. However, the accused has not examined any person in



connection with the alleged chit business said to have been running by him nor marked any document to show that he was carrying on the chit amount and hence, both the Courts below had rightly rejected the said plea that the defence has not probalised the defence theory.

16. In view of the clear and cogent evidence of P.W.1, coupled with the corroboration of P.W.2 and P.W.3, the learned Magistrate as well as the Sessions Judge had rightly held that the charge under Section 354 and Section 4, is made out by the prosecution beyond reasonable doubt. Further, also noted that the defence has failed to probalised the suggestive case either during the cross examination of P.W.1 or by adducing independent witnesses or marking document to that effect and accordingly, held that the prosecution has proved the charges beyond reasonable doubt. Such a finding rendered by both the Courts below are just and reasonable, cannot be termed as irregularity or illegality or warranting interference. Accordingly, the conviction laid by Courts below is hereby confirmed.

17. On the point of quantum of sentence, heard the learned counsel for the revision petitioner and taking into consideration that the fine amount of Rs.10,000/- has already been deposited, sentence awarded by the trial Court is reduced to one month from three months.

18. With the above observation, the criminal revision case is partly allowed to the limited extent, as indicated above.

Sd/-
Assistant Registrar(CS VIII)

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Sub Assistant Registrar

AT

Note: Registry is directed to call for an explanation from the learned Judicial Magistrate as to non mentioning of the remand period and also the bond in the impugned order dated 20.12.2016.

To

- 1.The Inspector of Police,
Omerabad Police Station,
Vellore District.



2.The III Additional Sessions Judge,
Vellore @ Thiruppathur, Vellore District.

3.The Additional District Munsif cum Judicial Magistrate,
Ambur, Vellore District.

4.The Section Officer
'B' Section
High Court, Madras.

(For due compliance of the 'note' order).

+1cc to M/S.E.Kannadasan, Advocate, S.R.No.42761

Cr1.R.C.No.1597 of 2017

RGN(CO)
PM/17/09/2021