

**BAIL SLIP**

The petitioner/Accused viz., Panimayam, D/o. Berkman, whose sentence was suspended on 02.03.2016 vide order of this court made in CRL MP(MD)No.1904 of 2016 in CRL RC(MD)No.115 of 2016.

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	25.03.2021
DELIVERED ON	22.04.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI**Crl.RC(MD)No. 115 of 2016**

Panimayam ... Petitioner/Appellant/Respondent

Vs.

The State rep. By Sub-Inspector of Police,
Radhapuram Police Station,
Tirunelveli District,
[Crime No. 83 of 2010]. ... Respondent/Respondent/Petitioner

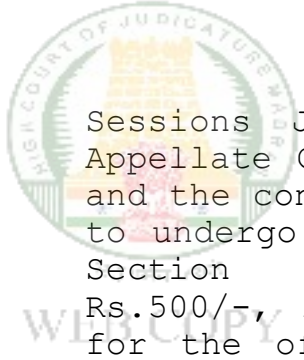
PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records and set aside the order passed by the learned IV Additional District and Sessions Judge, Tirunelveli in Crl.A. No.9 of 2014 dated 10.02.2016 confirming the order passed by the learned Judicial Magistrate, Vallioor, Tirunelveli District in C.C. No. 294 of 2010, dated 18.12.2013.

For Petitioner : Mr.KA. Raamakrishnan
For Respondent : Mrs.M. Anantha Devi
Government Advocate (crl.side)

ORDER

This Criminal Revision Case has been filed by the revision petitioner to set aside the Judgment, dated 10.02.2016 in Crl.A. No.9 of 2014 passed by the learned IV Additional District and Sessions Judge, Tirunelveli confirmed the Judgment, dated 18.12.2013 in C.C. No. 294 of 2010 passed by the learned Judicial Magistrate, Vallioor, Tirunelveli District.

2. As against the judgment of conviction and sentence passed by the learned Judicial Magistrate, Vallioor, Tirunelveli District, in C.C.No. 294 of 2010, dated 18.12.2013, the revision petitioner has preferred an appeal before the learned IV Additional District and



Sessions Judge, Tirunelveli, in C.A.No.294 of 2010. The lower Appellate Court, by judgment dated 10.02.2016, dismissed the appeal and the conviction and sentence to pay a fine of Rs.500/- in default to undergo simple imprisonment of One month for the offence under Section 294(b) of IPC and to pay a fine of Rs.500/-, in default to undergo simple imprisonment for One month for the offence under Section 323 of IPC and to undergo simple imprisonment for Six months and to pay a fine of Rs.10,000/- in default to undergo simple imprisonment for One month for the offence under Section 4 of Tamil Nadu Prohibition of Women Harassment Act, was confirmed. Aggrieved over the same, the petitioner has preferred the instant criminal revision case.

3. The case of the prosecution is that P.W.1/Viji's daughter, namely; P.W.2/Mariya Joseph Jenifer was studying Teacher Training in the Holy Cross Teacher Training College, Radhapuram, Tirunelveli District, in which the revision petitioner was a Correspondent. Due to her illness, P.W.2 was absent for a period of One week. On 19.04.2010 at about 11.10 a.m., P.W.1 along with her daughter P.W.2 went to meet the revision petitioner who was in his cabin. At that time, the revision petitioner asked to produce a medical certificate and also demanded to pay remaining fees amount. Therefore, P.W.1 requested to issue Transfer certificate of P.W.2. In this regard, a dispute arose between them. Subsequently, P.W.1 and P.W.2 came out from the cabin of revision petitioner. Thereafter, the revision petitioner abused P.W.1 by using filthy language and also criminally intimidated her. He assaulted P.W.1's left hand, right cheek, back side and head and also made life threat to her. Based on a complaint given by P.W.1, a case in Crime No. 83 of 2010 for the offences under Sections 294(b), 323, 506(2) of IPC and Section 4 of Tamil Nadu Prohibition of Women Harassment Act, was registered by the Radhapuram Police station.

4. The learned Counsel for the revision petitioner submitted that the Courts below have failed to consider that the allegation of Section 294(b) of IPC and Section 4 of Tamil Nadu Prohibition of Women Harassment Act with respect to the allegations are stated in the complaint and the First Information Report, but the same are not found in the statement under Section 161(3) of Cr.P.C., and therefore, both the Courts below have wrongly convicted on Section 294(b) of Cr.P.C., and Section 4 of Tamil Nadu Prohibition of Women Harassment Act. He further submitted that the prosecution has not examined the Doctor who issued wound certificate. He further submitted that the Courts below have failed to consider the evidences of P.W.6 and P.W.7 regarding no such occurrence held at the campus of the school. He further submitted that the fine imposed on the revision petitioner is highly excessive. Therefore, the Criminal Revision case is liable to be allowed .



5. Per contra, the learned Government Advocate (Crl. Side) submitted that the revision petitioner criminally intimidated the complainant/P.W.1 and abused her by using filthy language and also assaulted her by hands and caused simple injuries. She further submitted that he has been charged and the offences charged against him were clearly proved by the prosecution and therefore, the trial Court came to a correct conclusion and there is no infirmity to interfere with the findings of the trial Court. Hence, therefore, she prays for dismissal.

6. Heard the learned counsel for the petitioner and the learned Government Advocate (crl. Side) for the respondent police and perused the material documents available on record.

7. The petitioner/appellant/A-1 has filed this Civil Revision Petition to set aside the Judgment, dated 10.02.2016 in Crl.A. No.9 of 2014 passed by the learned IV Additional District and Sessions Judge, Tirunelveli confirmed the Judgment, dated 18.12.2013 in C.C. No. 294 of 2010 passed by the learned Judicial Magistrate, Vallioor, Tirunelveli District.

8. As per the prosecution case, P.W.1's daughter, namely; Mariya Joseph Jeniya was studying 1st year Teacher training in the revision petitioner's college who is said to be the correspondent of the college. Due to measles, P.W.1's daughter did not attend the classes. On 19.10.2010, P.W.1 along with her daughter/P.W.2 went to the Holy Cross Teacher Training College, Radhapuram, Tirunelveli District and went to meet the revision petitioner who was in his cabin. When they went inside the cabin, the revision petitioner has demanded the PW.1 to pay 1st year and 2nd year fees balance in the college and in this regard a dispute arose between them. Hence, the revision petitioner abused P.W.1 by using filthy language and hence, P.W.2 who went along with P.W.1 came out of the room and thereafter, the revision petitioner has assaulted P.W.1 on her right cheek, left wrist with hands and also made life threat to her. Thereafter, the incident was informed to the family members by P.W.2 and they have taken P.W.1 to the Hospital. P.W.1 was admitted in the Hospital and she was treated as in-patient.

9. It is seen from the records that the occurrence was took place on 19.04.2010 at 11.30 a.m., and the complaint was given on 20.04.2010 at 01.30 p.m. The date and time in receiving complaint is correct. There was a delay in registering the First Information Report and the delay was not properly explained.

10. The revision petitioner was charged for an offence under Section 294(b) of IPC. The ingredients of Section 294(b) is extracted hereunder:



294: *Obscene acts and songs:- Whoever, to the annoyance of others,*

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene songs, ballad or words, in or near any public place,

11. Admittedly, the occurrence was alleged to be happened inside the cabin of the revision petitioner. Except P.W.1 and P.W.2 nobody was present in the place of occurrence.

12. The relevant portion of the Judgment reported in **CDJ 1996 MHC 397, K. Jayaramanuj Vs. Janakaraj and Others**, is extracted hereunder:

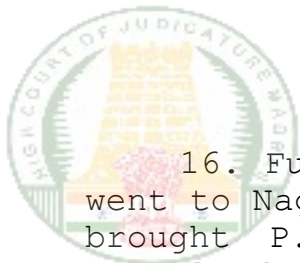
"To prove the offence under Section 294, IPC mere utterance of obscene words are not sufficient, but there must be a further proof to establish that it was to the annoyance of others, which is lacking in this case".

In the case on hand, the obscene words in complaint and evidence of P.W.1 & P.W.2 are not corroborated each other. Therefore, Section 294(b) of IPC is not attracted in this case.

13. The revision petitioner was charged for an offence under Section 323 of IPC. As per complaint, when P.W.1 & P.W.2 were present in the revision petitioner's cabin, the petitioner assaulted P.W.1. But, P.W.2 admitted in her evidence that, she went out after hearing the obscene words. She only saw her mother after occurrence. P.W.2 is the eye witness for the offence under Section 323 of IPC. As stated above, complaint/Ex.P.1 was given after long delay. As per complaint, when P.W.1 & P.W.2 tried to come out from his cabin, the revision petitioner twisted P.W.1's left hand with his right hand and slapped on her cheek. He also assaulted her and sustained blood injury on her lips.

14. Per contra, P.W.1 stated in her evidence that, the revision petitioner hold her hand and slapped on her cheek. He also assaulted her in many parts of her body. She had also admitted in chief examination that she did not state to the respondent police that he had assaulted her on many parts of her body. P.W.2 had stated that she went after heard her mother's sound and saw blood injuries on the body of P.W.1 and her cheek also bulged.

15. The Doctor was examined as P.W.5. She had deposed that P.W.1 came for treatment on 19.04.2010 at 03.00 p.m. At that time, P.W.1 had stated that there was pain on her face and left wrist. But, P.W.5 did not state anything about the external injuries, especially, blood injury on the lips of P.W.1.



16. Further, when they went to Hospital, P.W.1 stated that they went to Nagercoil and then went to Hospital. P.W.2 deposed that she brought P.W.1 directly to the Hospital. If really P.W.1 was assaulted by the revision petitioner they ought to have go to Hospital immediately. There was no proper reason for why P.W.1 was treated as inpatient for three days and there is no reason from the side of Doctor and in the wound certificate. Therefore, Section 323 of IPC also not attracted. The offences under Sections 294(b), 323 of IPC are not proved only on the basis of Section 4 of Tamil Nadu Prohibition of Women Harassment Act include. Therefore, it is also not proved.

17. For the aforesaid reasons, this Court is inclined to interfere with the Judgment of the Courts below. Both the Courts below have committed an error in convicting the revision petitioner on sole ground that P.W.1 was treated as inpatient for three days.

18. Finally, this Criminal Revision Case is allowed and set aside the Judgment, dated 10.02.2016 in CrI.A. No.9 of 2014 passed by the learned IV Additional District and Sessions Judge, Tirunelveli, confirmed the Judgment, dated 18.12.2013 in C.C. No. 294 of 2010 passed by the learned Judicial Magistrate, Vallioor, Tirunelveli District. The revision petitioner is acquitted of the charges framed against him. Fine amount, if any paid, shall be refunded and bail bonds, if any executed, shall stand terminated.

Sd/-

Assistant Registrar(AD-II)

// True Copy //

/ /2021

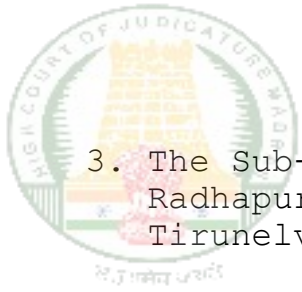
Sub Assistant Registrar(CS)

ksa

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1. The IV Additional District and Sessions Judge,
Tirunelveli.
2. The Judicial Magistrate, Vallioor,
Tirunelveli District.



3. The Sub-Inspector of Police,
Radhapuram Police Station,
Tirunelveli District,
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai. (2 copies)

**Order made in
Cr1.RC(MD)No.115 of 2016
22.04.2021**

PM(CO)
TR(18.05.2021) 6P 7C