



WEB COPY

Crl.R.C.(MD)No.540 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE **R.PONGIAPPAN**

Crl.R.C. (MD)No.540 of 2017

and

Crl.M.P(MD)Nos.6387 & 6388 of 2017

Kaliaperumal

: Petitioner/1st Appellant/
Accused No.1

Vs.

State; Represented by
The Inspector of Police,
East Police Station,
Thanjavur.
Cr.No.298 of 2012.

: Respondent/Respondent/
Complainant

PRAYER: The Criminal Revision Petition is filed under Section 397 r/w 401 of the Code of Criminal Procedure, to set aside the judgment rendered in C.A.No.8 of 2016, dated 21.11.2016 on the file of the Principal District Sessions Judge, Thanjavur by confirming the conviction and sentence passed by the Judicial Magistrate No.I, Thanjavur in C.C.No.209 of 2012, dated 10.02.2016 and acquit the petitioner.

For Petitioner	: Mr.M.R.R.Sivasubramanian
For Respondent	: Mr.M.Muthumanikkam Counsel for Government of Tamil Nadu (Crl.side)

ORDER

Aggrieved over the concurrent findings made in C.C.No.209 of 2012, on the file of the Judicial Magistrate No.I, Thanjavur, dated 10.02.2016 and C.A.No.8 of 2016, on the file of the Principal District Sessions Judge, Thnajakur, dated 21.11.2016, the revision petitioner is before this Court to check the correctness of those judgments.

2. Totally there are four accused in this case. The revision petitioner is arrayed as accused No.1 in C.C.No.209 of 2012, on the file of the Judicial Magistrate No.I, Thanjavur. Before the trial Court, the revision petitioner and others stood charged for the offences punishable under Sections 294(b) of IPC and Section 4 of Tamil Nadu Harassment of Women Act, 1988. They denied the same and opted for trial. Therefore, they were put on trial on the charges.



3. After full-fledged trial, the learned Judicial Magistrate No.I, Thanjavur, found the revision petitioner and his wife guilty under Section 294(b) of IPC and imposed a fine of Rs.1,000/- in default to undergo simple imprisonment for two weeks. The trial Court convicted the revision petitioner under Section 4 of Tamil Nadu Harassment of Women Act, and sentenced to undergo Simple Imprisonment for 6 months and to pay a fine of Rs.10,000/-, in default, to undergo Simple Imprisonment for two weeks. Further, the trial Court acquitted the other accused from the charges.

4. Challenging the said conviction and sentence, the revision petitioner and his wife preferred an appeal in C.A.No.8 of 2016, before the Principal District Sessions Court, Thanjavur. The learned Principal District Sessions Judge, Thanjavur, by judgment, dated 21.11.2016 affirmed the findings arrived at by the trial Court and dismissed the appeal with respect to Section 4 of Tamil Nadu Harassment of Women Act alone and in respect of the offence under Section 294(b) I.P.C., acquitted the revision petitioner and his wife. Aggrieved over the said findings, the petitioner is before this Court with the present Criminal Revision Case.

5. The case of the prosecution in brief is as follows:-

The revision petitioner is the Correspondent in Sri Laxmi Elementary School situated in Thanjavur. P.W.1-Ponrani was working as a Teacher in the above said School. On 05.07.2012 around 10.00 a.m., when at the time, P.W.1-Ponrani, P.W.2-Jaculin and P.W.3-Santhi requested one Jeyalakshmi, who is the wife of the first accused, to give the attendance register pertains to the third standard, the wife of the first accused Gajalakhmi by using filthy language abused P.Ws.1 to 3 and refused to give the attendance register. Later on, the same was intimated to the District Educational Officer and thereafter, the District Educational Officer came there and handed over the attendance register to P.W.1. After seeing the said incident, the first accused/revision petitioner herein, came there and after removing the Pant Belt by showing his secret parts, abused the P.W.1 by using the filthy language. After the said incident, P.W.1 informed the same to the District Educational Officer and thereafter, she gave a complaint to the Thanjavur Town East Police Station. Since the police attached with the Thanjavur Town East Police Station instructed P.W.1 to obtain a signature from the District Educational Officer, P.W.1 lodged a complaint before the Superintendent of Police, Thanjavur. The complaint given by P.W.1 was marked as Ex.P1. The said occurrence was witnessed by P.Ws.2 & 3, who are also the teachers working in the same school.

(ii) P.W.6-Tr.Kannaiyan, the then Special Sub-Inspector of Police, on 08.07.2012 around 17 hours, while he was on duty, in Thanjavur Town East Police Station, received a complaint from P.W.1 and registered a case against the revision petitioner and others in



Nadu Harassment of Women Act. The copy of the printed FIR has been marked as EX.P.3. After registration of the case, P.W.6 handed over the FIR to P.W.7-Saravanan, the then Inspector of Police, for investigation.

(iii) On receipt of the FIR, P.W.7-Saravanan on the same day visited the scene of occurrence and in the presence of witnesses, he prepared an Observation Mahazar under Ex.P2. He drawn the Rough Sketch under Ex.P4. He examined the witnesses and recorded their statements.

(iv) On 20.07.2012 he examined the District Educational Officer and one Kannaiyan Special Sub-Inspector of Police and recorded their statements. After concluding the investigation, he came to the positive conclusion that the accused are guilty for the offences punishable under Section 294(b) of IPC and Section 4 of Harassment of Women Act. He filed a final report accordingly.

6. Based on the above materials, the trial Court framed the charges against the revision petitioner and others under Section 294(b) of IPC and Section 4 of Tamil Nadu Harassment of Women Act. All the accused denied the charges and opted for trial. Hence, in order to prove their case, on the side of the prosecution, 7 witnesses were examined as P.W.1 to P.W.7 and 4 documents were marked as Ex.P1 to Ex.P4.

7. When the above incriminating materials were put to the accused under Section 313 Cr.P.C. the accused denied the same as false. However, he did not chose to examine any witness nor mark any document on their side.

8. Having considered all the above materials and after hearing the arguments advanced by the learned counsel appearing on either side, the learned trial Judge convicted the revision petitioner under Section 294(b) of IPC and Section 4 of Tamil Nadu Harassment of Women Act and convicted the second accused under Section 294(b) of IPC and acquitted the other accused. Further, the conviction and sentence awarded by the trial Court under Section 4 of Tamil Nadu Harassment of Women Act against the revision petitioner was confirmed by the learned Principal District Sessions Court, Thanjavur and the conviction and sentence awarded by the Trial Court under Section 294(b) of IPC against the revision petitioner and his wife was set aside in C.A.No.8 of 2016.

9. I have heard Mr.M.R.R.Sivasubramanian, learned counsel appearing for the revision petitioner and Mr.M.Muthumanikkam, learned Government Advocate (Crl.side) appearing for the respondent. I have also perused the records carefully.

10. The learned counsel appearing for the revision petitioner submitted that initially in respect to the



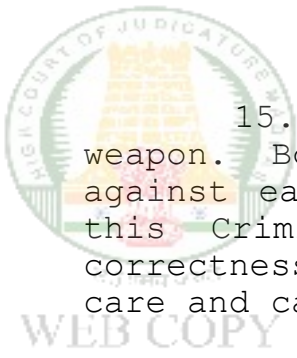
registration of the case, P.W.1 has stated different version as she lodged a complaint before the Superintendent of Police, Thanjavur and on the other hand, P.W.6, the then Special Sub-Inspector of Police has stated that he received a complaint from P.W.1 and registered a case in Cr.No.298 of 2012. Further, in respect to the occurrence, P.Ws.1,2 & 3 have categorically stated that after getting information, the District Educational Officer of the concerned District came there and handed over the attendance register to P.W.1. On the other hand, while at the time of giving evidence as P.W.5 the said District Educational Officer has stated that he was not came to the School on the date of occurrence.

11. The learned counsel appearing on behalf of the revision petitioner would further contend that the contradictions in respect of the lodging of the complaint and in respect of the presence of the District Educational Officer would falsify the entire case of the prosecution. In this regard, the Courts below without considering the same, confirmed the conviction and sentence, which is nothing but perverse. After submitting as above, he prayed to allow this Criminal Revision Case.

12. In reply to the contention made by the learned counsel appearing for the revision petitioner, the learned Government Advocate (Crl.side) appearing for the respondent would contend that the contradiction now indicated by the petitioner's counsel is a minor contradictions and the same did not spoil the prosecution case with entirety. In respect to the alleged occurrence, the evidence given by P.Ws.1 to 3 is cogent and also sufficient to accept the case of the prosecution. According to him, interference of this Court in the findings arrived at by the trial Court does not require.

13. I have considered the rival submissions made by the learned counsel appearing on either side.

14. It is not in dispute that previous to the occurrence, P.W.1 and other Teachers working in the School, in which, the alleged occurrence had happened, made agitation against the Management of the School. In order to show the agitation made by the prosecution witnesses, Photographs, which had taken during the time of agitation, had been marked as Ex.D1. Further, genuinity of the said photographs had also been admitted by P.Ws.1 and 2 as genuine one. Further, it is not in dispute that, depending upon the strength of the students, only two teachers are eligible to appoint, but, the evidence given by the prosecution witnesses shows that while at the time of alleged occurrence had happened, four teachers are working in the said school. Therefore, the said circumstances reveals the fact that P.Ws.1 to 3 are having grudge and enmity over the Management of the School. In the same way, the Management also having grudge over the Teachers.

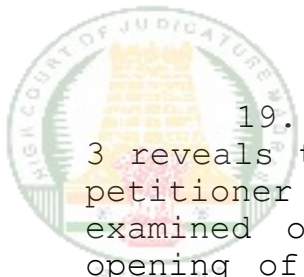


15. Being the reason that previous enmity is a double edged weapon. Both P.W.1 and the Management may raise a false allegations against each other. Therefore, for deciding the issue raised in this Criminal Revision Case, it is necessary to decide the correctness of the evidence given by the prosecution witnesses with care and caution.

16. In respect to the registration of the case, as rightly pointed out by the learned counsel for the revision petitioner that P.W.6, the then Special Sub-Inspector of Police, after receipt of the complaint from P.W.1, registered a present case. On the other hand, in respect to the lodging of the complaint, P.W.1 has stated before the trial Court as after the occurrence, when at the time she attempted to lodge a complaint before the East Police Station, Thanjavur, he refused to receive the complaint. Therefore, it is obvious, if the complaint has been presented before the Superintendent of Police, necessarily the said complaint have the signature of the Superintendent of Police or atmost the same, should have the seal of the Office of the Superintendent of Police. On the other hand, now, on go through Ex.P1 complaint, it appears that there was an endorsement from the Office of the Superintendent of Police directing the officers attached with East Police Station, Thanjavur to take necessary action on the complaint given by P.W.1. Therefore, it is made clear that in respect to the lodging of complaint, the evidence given by P.W.1 is found correct and cogent. Therefore, the submission of the petitioner's counsel in respect to the lodging of complaint is not having any force to assail the case of the prosecution.

17. Secondly, in respect to the overt-act of the revision petitioner, P.W.1 in her Chief-examination had specifically stated that during the time of occurrence, the revision petitioner remove the Pant Belt and abusively by putting his hand, questioned P.W.1 “உன்னால் என்ன செய்யமுடியும்”. In this regard, in the complaint Ex.P1, the revision petitioner has stated the occurrence as during the relevant point of time, the revision petitioner removed his Pant Belt and after standing in abnormal position requested P.W.1 to take photograph. Now, on considering the said version with the evidence given by P.W.1 in respect to taking of photograph, P.W.1 has not given any evidence. Therefore, the evidence given by P.W.1 appears that the same is not wholly reliable. Therefore, it is necessary to verify whether other witnesses examined on the side of the prosecution, who gave evidence in support of P.W.1 evidence, is correct or not.

18. In the regard, P.Ws.2 & 3 are the eye witnesses, have stated in their evidence as during the time of occurrence, the accused abused the P.W.1 by saying that “1-வது எதிரி பெல்ட்டை அவிழ்த்து வந்து உன்னால் அட்டடன்ஸ் மட்டும் தான் பிடுங்க முடியும், இதை வேண்டுமானால் போட்டோ பிடித்து போட்டாலும் என்னை ஒன்றும் செய்ய முடியாது என்றார்”.



19. Now, on conjoint reading of the said evidence, P.Ws.1 to 3 reveals the fact that during the time of occurrence, the revision petitioner remove the Pant Belt only. In respect of the witnesses examined on the side of the prosecution did not say about the opening of pant zip. Therefore, abusing the victim by saying the word you take photograph would not constitute the offence of Harassment.

20. As per the definition of Section 2(a) of Tamil Nadu Harassment of Women Act, the word remove the Pant Belt and putting his hand on that area, cannot be said as a indecent conduct. On the other hand, only at the time when the petitioner acted in a indecent manner, the term harassment is attract. Accordingly, I am of the view that, the overt-act committed by the accused at the time of occurrence, may not come into the definition of Harassment Act.

21. On whole reading of the evidence given by P.Ws.1 to 3 seems that on the date of occurrence, after getting information, the District Educational Officer was came to the School and after receiving the attendance register from the revision petitioner's wife, he handed over the same to P.W.1. In this regard, while at the time of giving evidence as P.W.5, he has stated in his cross-examination as on 05.07.2012 there is no such occurrence had happened in respect to the attendance register and therefore, no complaint has been lodged before him.

22. Accordingly, the witnesses examined on the side of the prosecution also not in favour of the prosecution. Therefore, in the light of the above discussion, I am of the firm opinion that the prosecution failed to prove its case beyond reasonable doubt.

23. Accordingly, the Criminal Revision Case is allowed and the conviction and sentence imposed on the revision petitioner, by the learned Judicial Magistrate No.I, Thanjavur, made in C.C.No.209 of 2012, dated 10.02.2016 and the same was modified by the learned Principal District and Sessions Judge, Thanjavur, made in C.A.No.8 of 2016, dated 21.11.2016, are set aside and the revision petitioner is acquitted of all the charges. The fine amount, if any, paid by him, shall be refunded to him. Bail bond, if any, executed by the revision petitioner shall stand cancelled. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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Sub Assistant Registrar(CS)

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To

- 1.The Principal District Sessions Court,
Thanjavur.
- 2.The Judicial Magistrate No.I,
Thanjavur.
- 3.The Inspector of Police,
East Police Station,
Thanjavur.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

**CrI.R.C. (MD) No.540 of 2017
13.08.2021**

RD(24.08.2021) 7P 5C