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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 31.01.2022

Pronounced on : 09.02.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY
Crl.R.C.No.1516 of 2013

1.K.C.Subramani (Died)

2.S.Vinayagam ... Petitioners
[Impleaded as second petitioner as per order
of this Court in Crl.R.C.No.1516 of 2013
dated 22.12.2021]

Versus

1.State rep.by,
The Deputy Superintendent of Police,
Katpadi, Vellore District.
(Thiruvalam Police Station
in Crime No.306 of 2003)

2.Murugan

3.Krishnan ... Respondents

Prayer: Criminal Revision Petition is filed under Section 397 r/w 401 of Criminal Procedure Code, as against the Judgment dated 04.12.2006 in Spl.S.C.No.13 of 2005 made by the Learned Principal District and Sessions Judge, Vellore (constituted as Special Court under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989), in so far as the same imposed sentence of fine of Rs.200/-, Rs.100, Rs.100/- and Rs.5000/- only for the respective charges for the offences under Sections 447, 341, 294(b), 506(ii) of I.P.C., on the respondents 2 and 3 herein, praying for enhancement of sentence.

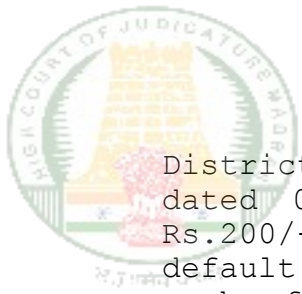
For Petitioners : Mr.S.Sathia Chandran

For Respondents : Mr.L.Baskaran, (for R1)
Govt., Advocate (crl.side)

: Mr.V.Karthikeyan (for R2 & R3)

ORDER

A. The Revision :



District and Sessions Judge, Vellore in Spl.S.C.No.13 of 2015, dated 04.12.2006, imposing the sentence of only a fine of Rs.200/- each, for the offence under Section 447 3of I.P.C., in default to undergo, one week imprisonment; a fine of Rs.100/- each, for the offence under Section 341 of I.P.C., in default to undergo, one week imprisonment; a fine of Rs.100/- each, for the offence under Section 294(b) of I.P.C., in default to undergo, one week imprisonment; a fine of Rs.5,000/- each for the offence under Section 506(ii) of I.P.C., in default to undergo, three months imprisonment, and to impose an appropriate sentence on the accused, who are guilty of the offences.

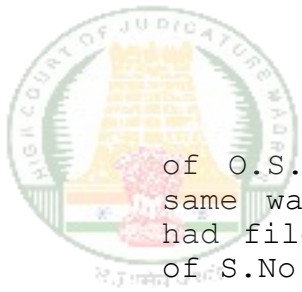
B. Remand by the Hon'ble Supreme Court of India :

2.The accused had paid their respective fine amounts and had not preferred an appeal against the conviction and sentence. Originally, by an order dated 24.10.2018, the Criminal revision was taken up by this Court and the respondents 2 & 3/accused were not present. After considering the case on merits the sentence was enhanced, imposing imprisonment sentences for the offences proved. As against the order of this Court the petitioner/accused preferred an appeal in S.L.P.Crl.No.10306 of 2019. By order dated 29th November 2021, the Hon'ble Supreme Court of India held that the action of this Court in enhancing the sentence without the accused being represented by Legal Aid Counsel is erroneous even if they had not engaged a counsel, and remanded the matter back to this Court.

3.In the meanwhile, the original revision petitioner/K.C.Subramani died and upon being furnished the particulars of the legal heir, namely, his son Mr.S.Vinayagam, this Court impleaded him as the second petitioner in the case. It is pertinent to state here that originally the matter was before the Learned District and Session Judge, Vellore in Spl.S.C.No.13 of 2015 as the respondents 2 & 3/accused were also charged for an offence under Section 3(1)(x) of the Scheduled Caste/Scheduled Tribes (Prevention of Atrocities) Act and the Trial Court disbelieved the case of the prosecution in respect of the said offence and acquitted the respondents 2 & 3/accused of the said offences, however, no appeal is preferred either by State or by P.W.1/de-facto complainant, or his legal heirs as against the acquittal of the respondents 2 & 3/accused in respect of the said charges.

C. The Complaint & the trial :

4.On 06.11.2003, P.W.1/K.C.Subramani, went to Thiruvallam Police Station, Vellore District and handed over a copy of the complaint dated 05.10.2003 along with the order of this Court in Crl.O.P.No.3667 of 2003 dated 23.10.2003, directing the respondent/Police, to consider the complaint and register a case if offences are made out. In the complaint, P.W.1 stated that he belonged to the scheduled caste, he was the owner of the land in S.No.75/2. The owner of the adjacent land in S.No.75/2B viz., Kandhasamy gounder had encroached a portion of his land, therefore, he had approached the Civil Court by way



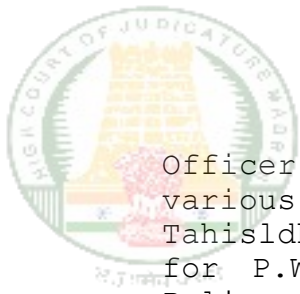
of O.S.No.616 of 1986 for declaration and possession and the same was decreed in his favour on 04.08.1999. Similarly, he had filed against one more person by name Yelyonan, in respect of S.No.75/1 and he has surrendered the possession.

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5.Pursuant to the decree against Kandhasamy gounder, an execution petition was filed in which, possession was taken. On 05.10.2003 at 8.00 a.m., when he and his wife and his son were removing the vegetation/wild growth and debris in their lands while making the bund, the sons of Kandasamy viz., Murugan and Krishnan and some other persons came to the spot and prevented them for carrying on their work and trespassed into their land and attempted to remove the boundary stones and challenged them by stating that the Order obtained from the Court will not bind them and threatened them with dire consequences by mentioning their caste name and he was scolded with extremely derogatory words and his wife was also abused by using filthy and sexually abusive language and by using her caste name and the accused also threw some stones on them. On the said complaint a case in Crime No.306 of 2003 was registered by the Sub-Inspector of Police, for the offence under Section 341, 447, 294(b) and 506 (ii) of I.P.C., read with Section 3(1) (x) of the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 1989. Thereafter, P.W.11/ Anitha Husain, the Deputy Superintendent of Police, took up the case for investigation and laid a final report, proposing the respondents 2 & 3/accused guilty of the offences aforementioned.

6.The Learned Principal District and Sessions Judge, Vellore, which is the Special Court under the Act, took the case on file in Spl.SC.No.13 of 2015, furnished the copies to the accused as per Section 207 of Cr.P.C. Considering the submissions made by the Learned Public Prosecutor and the Learned Counsel appearing for the accused and framed charges under Section 447, 341, 294(b), 434, 506(ii) of I.P.C., and under Section 3(1)(x) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act. Upon questioning the respondents 2 & 3/accused, they denied the charges and stood trial.

7.On behalf of the prosecution, the first informant, Mr.K.C.Subramani, was examined as P.W.1, who spoke about the contents of his complaint; his wife, the other victim viz., Vijaya as P.W.2, who spoke about the acts of the respondents 2 & 3/accused abusing her by caste name as well as in filthy language; one Yasodha, who is relative of P.W.1 and P.W.2./Vijaya, was the eye-witness for the incident was examined as P.W.3; One Subramani, who is again a relative to P.W.1 to P.W.2 is another eye-witnesses of the incident was examined as P.W.4; One Mani, who was sought to be examined as eye-witness, but, he turned as hostile as P.W.5; One Gugan, witness of the Observation Mahazar as P.W.6, who also turned as hostile; One Srinivasan, another witness to the Observation Mahazar as P.W.7; One Parasuraman, Village Administrative



Officer as P.W.8, who spoke about the ownership of lands of various Survey numbers; One Logasanjeevi, who was working as Tahisldhar as P.W.9, who had issued the community certificate for P.W.1 and P.W.2; One Palani, the then Sub-Inspector of Police, Thiruvallam Police Station, who registered the First Information Report as P.W.10; One Anitha Hussain, Deputy Superintendent of Police, who is the Investigating Officer as P.W.11.

8. On behalf of the prosecution, a complaint given by P.W.1 was marked as Ex.P-1; a copy of the order in CrI.O.P.No.36667 of 2003 was marked as Ex.P-2; a certified copy of the Judgment in O.S.No.616 of 1986 on the file of the District Munsif Court, Gudiyatham was marked as Ex.P-3; another complaint given by P.W.4/ Subramani before the Thiruvallam Police Station as Ex.P-5; the Observation Mahazar dated 07.11.2003 is marked as Ex.P-6; the Seizure Mahazar of the boundary stone is marked as Ex.P-7; the Citta, Adangal in respect of S.No.75/2A is marked as Ex.P-8; another Citta, Adangal in respect of S.No.75/2A is marked as Ex.P-9; The receipt issued by the Village Administrative Officer for payment of kist by Ponnusamy is marked as Ex.P-10; the Community Certificate of P.W.1 is Ex.P-11; the Community Certificate of P.W.2 is Ex.P-12; the community certificate of Mr.Vinayagam, son of K.C.Subramani/defacto complainant, as Ex.P-13; the Community Certificate of the second respondent/first accused is Ex.P-14; the Community Certificate of the third respondent/ second accused is Ex.P-15; The First Information Report in Crime No.306 of 2003 is Ex.P-16; the proceedings of the Superintendent of Police, Vellore as Ex.P-17; the Rough Sketch as Ex.P-18. This apart, the boundary stone was produced as M.O-1.

9. Upon being questioned about the material evidence and adverse circumstances on record as per Section 313 of Cr.P.C., the accused denied the same as false. However, no oral or documentary evidence was let in on behalf of the defence. Under these circumstances, the Trial Court proceeded to hear the Learned Special Public Prosecutor for the prosecution and the Learned Counsel appearing for the accused and by its Judgment dated 04.12.2006 the Trial Court found that in view of the Judgment of the Civil Court, it is clear that the land belongs to P.W.2 and the counter-complaint given by P.W.1 that he had encroached his land is incorrect. From Community Certificate, it is clear that P.W.1 and P.W.2 belonged to schedule caste and the respondents 2 & 3/accused belonged to the Most backward caste. Before the Court P.W.1 to P.W.4 have cogently deposed about the occurrence, therefore, since the respondents 2 & 3/accused entered into the lands belonging to P.W.1, the offence under Section 447 is made out.



is clear that the accused have used obscene words, therefore the offence under Section 294 (b) is made out. Since P.W.1 has been prevented from the further movement, the offence under Section 341 is proved. However, considering the earliest complaint in Ex.P-1 that specific caste name was not mentioned, the Trial Court refused to believe the evidence of P.W.1 to P.W.4 in respect of calling by caste name and acquitted the respondents 2 & 3/accused of the offence under Section 3(1) (x) of the SC/ST (POA) Act, 1989.

11. Similarly, the Trial Court disbelieved the evidence of the prosecution that respondents 2 & 3/ accused have removed the boundary stones and consequently acquitted the respondents 2 & 3/accused for the offence under Section 434 of I.P.C. Further, upon considering the complaint given by P.W.1 and the oral and documentary evidence of P.W.1, P.W.2 and P.W.5, the Trial Court found that the respondents 2 & 3/ accused are guilty of the offence under Section 506(ii) of I.P.C., Upon the said findings the Trial Court imposed only fine as the sentence as mentioned in paragraph 1 above. Aggrieved by the quantum of sentence, P.W.1/de-facto complainant has laid the present revision before this Court.

D. The Contentions in the Revision :

12. Heard Mr.S.Sathia Chandran, Learned Counsel for the petitioners. After filing detailed written submissions and also producing an additional typed set of papers containing the connected proceedings relating to other criminal cases etc., between the petitioner and the respondents 2 & 3/ accused and with their family members, the Learned Counsel took this Court through the Judgment of the Trial Court and the evidence on record and submitted that in a case of this nature, even though they have not preferred any appeal as against the acquittal of the respondents 2 & 3/accused in respect of the offence under Section 3(1)(x) of the SC/ST (POA), Act, would submit that it is clear case where P.W.1, P.W.2 and their family members were victimised not only by way of depriving of their property, even after obtaining valid decree from the Civil Court, they were subjected to grave amount of mental trauma and physical violence. But, the Trial Court, without considering the seriousness of this case, in a casual manner without imposing any sentence of imprisonment had imposed the fine amount alone in respect of proved offences. This according to the Learned Counsel for the petitioner is directly violative of the principles of sentencing enunciated by the Hon'ble Supreme Court of India in State of Madhya Pradesh Vs. Suresh¹, more specifically, by relying upon paragraph Nos.14 and 15, which is extracted hereunder:-

"14. Proportion between crime and punishment is a goal respected in principle, and in spite of crude notions, it remains a strong influence in



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the determination of sentences. The practice of punishing all serious crimes with equal severity is now unknown in civilized societies, but such a radical departure from the principle of proportionality has disappeared from the law only in recent times. Even now for a single grave infraction drastic sentences are imposed. Anything less than a penalty of greatest severity for any serious crime is thought then to be a measure of toleration that is unwarranted and unwise. But in fact, quite apart from those considerations that make punishment unjustifiable when it is out of proportion to the crime, uniformly disproportionate punishment has some very undesirable

practical consequences.

15. After giving due consideration to the facts and circumstances of each case, for deciding just and appropriate sentence to be awarded for an offence, the aggravating and mitigating factors and circumstances in which a crime has been committed are to be delicately balanced on the basis of really relevant circumstances in a dispassionate manner by the court. Such act of balancing is indeed a difficult task. It has been very aptly indicated in *Dennis Councle MCGautha v. State of California*: 402 US 183: 28 L Ed 2d 711 (1071) that no formula of a foolproof nature is possible that would provide a reasonable criterion in determining a just and appropriate punishment in the infinite variety of circumstances that may affect the gravity of the crime. In the absence of any foolproof formula which may provide any basis for reasonable criteria to correctly assess various circumstances germane to the consideration of gravity of crime, the discretionary judgment in the facts of each case is the only way in which such judgment may be equitably distinguished."

Thus, he would urge this Court to enhance and award maximum sentences to the respondents 2 & 3/accused for the offences, in view of the above pronouncement of law of the Hon'ble Supreme Court of India.

13. Opposing the said submissions, Mr. V. Karthikeyan, Learned Counsel appearing for the respondents 2 & 3/accused would submit that first of all in view of the amendment to Section 372 of the Code of Criminal Procedure, the petitioner/victim has the right to file an appeal and therefore, the revision is not maintainable. In respect of his submissions, he would rely upon the Judgment of the Hon'ble Supreme Court of India, in *Joseph Stephen and Ors. Vs. Santhanasamy and Ors.*,². Further, the Learned Counsel would submit that even assuming that the



revision is treated as an appeal by this Court, as per the aforementioned Judgment of the Hon'ble Supreme Court of India, or even if the revision is taken up as such for enhancement of sentence, he would submit that inspite of the fact that the respondents 2 & 3/accused have paid the fine and did not file any appeal against the conviction, will still be entitled to canvass that they are innocent and that the offences alleged by the prosecution are not made out and that they are entitled to the acquittal from this Court. It is the submission of the Learned Counsel that this is the case where P.W.1 and his family members were involved in repeatedly lodging false cases under SC/ST (POA) Act and on an earlier occasion, they were acquitted by the Trial Court.

14. He would further submit that as a matter of fact, a subsequent complaint has also been given by them. He would submit that even taking the evidence of P.W.1, P.W.2 and P.W.3 on its face value, there is no evidence on record for: a) trespass b) for wrongful restrain, c) for the offence under Section 294(b) of I.P.C., therefore, he would submit that straight away the respondents 2 & 3/accused are entitled for acquittal in respect of the said offences.

15. As far as the offence under Section 506(ii) of I.P.C., is concerned, it is the submission of the Learned Counsel that mere uttering of the words " I will kill you" is not enough for making out the offence under Section 506(ii) of I.P.C. The threat should be serious, impending and real and given the nature of the evidence, especially, when all the other offences in the complaint are being disbelieved, the respondents 2 & 3/accused are entitled for acquittal for the offence under Section 506(ii) of I.P.C., also.

16. In support of his submissions, the Learned Counsel would rely upon the Judgment of this Court in Rajan Vs. State, represented by the Inspector of Police, Central Crime Branch, Thiruppur³, by relying on the paragraph Nos.10 & 11, which are extracted hereunder:-

"10. In a similar case, the Punjab & Haryana High Court quashed the proceedings in respect of the offence under Section 506(ii) of IPC in a case in Usha Bala V. State of Punjab (P&H), 2002 (2) C.C.Cases 320 (P&H), that,-

"Empty threats does not prima facie mean that the case u/S. 506, IPC is made out against the Petitioner. Hence, in face no case is made out against the Petitioner.

Consequently, FIR No.313 dated 15.7.1999



u/S. 406/498-A, IPC of police Station, Sadar, Patiala is quashed qua the Petitioner only."

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11. It is seen even in the instant case, except a vague and bald allegation of criminal intimidation, the de facto complainant has not stated that there was any threat to his life or sought for any police protection. Therefore, this Court is of the considered view that even the offence under Section 506(i) I.P.C is not maintainable"

And he would submit that in view of the above, the offence under Section 506(ii) of I.P.C., is not made out.

17. The Learned Counsel, further relied upon the Judgment of the Hon'ble Supreme Court of India in Manik Taneja and Another Vs. State of Karnataka and Another⁴, wherein it was held as follows in paragraphs Nos.11 & 12 :-

"11. Section 506 IPC prescribes punishment for the offence of criminal intimidation. "Criminal intimidation" as defined in Section 503 IPC is as under:-

"503. Criminal intimidation.—Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.—A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section."

A reading of the definition of "criminal intimidation" would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.

<https://hcservices.ecourts.gov.in/hcservices/> 12. In the instant case, the allegation is that the appellants have abused the complainant and



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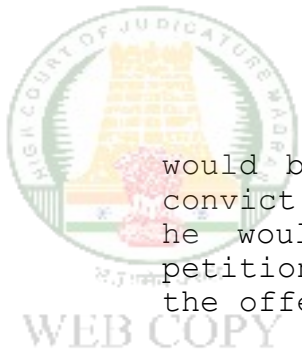
obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of "criminal intimidation". The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the mind of the second respondent causing obstruction in discharge of his duty. As far as the comments posted on Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of the appellants posting a comment on Facebook may not attract ingredients of criminal intimidation in Section 503 IPC."

18. Therefore, he would submit that in the instant case also even though the words are re-produced, the evidence available on record are not suffice to hold that there was actually criminal intimidation. The Learned Counsel also relied upon the Judgment of the Hon'ble Supreme Court of India in Parminder Kaur alias P.P. Kaur alias Soni Vs. State of Punjab⁵, by relying upon paragraph No.26, which is reproduced hereunder:-

" V. Charge of criminal intimidation

26. Proving the intention of the appellant to cause alarm or compel doing/abstaining from some act, and not mere utterances of words, is a prerequisite of successful conviction under Section 506 IPC [Manik Taneja v. State of Karnataka, (2015) 7 SCC 423, para 12 : (2015) 3 SCC (Cri) 132]. The trial court has undertaken no such separate analysis or recorded any finding on this count, thus calling into question the conviction for criminal intimidation. Further, the nature of this charge is such that it is a derivative of the main charge of "procurement of minor girls". Given the facts of this case where the common testimony of PW 1 on both charges has been doubted, it would be unwise to rely upon it as the sole piece of evidence to convict the appellant for criminal intimidation without any other corroboration [Kamij Shaikh v. Emperor, 1946 SCC OnLine Pat 182 : AIR 1948 Pat 73, para 5]. "

Therefore, he would contend that when the Court acquits the accused for the other offences, it



would be unwise to rely upon the sole piece of evidence and convict the accused for criminal intimidation alone. Therefore, he would submit that even in this revision filed by the petitioner / P.W.1, this Court should acquit the accused of all the offences.

19.Mr.L.Baskaran, Learned Government Advocate (Crl.side) appearing for the first respondent would submit that the prosecution has proved the offences beyond any reasonable doubt and in the absence of appeal by the respondents 2 & 3/accused persons, the submissions of the Learned Counsel for the respondents 2 & 3/accused need not be considered.

20. In reply to the submissions made by the Learned Counsel for the respondents 2 & 3/accused, Mr.Sathia Chandran, Learned Counsel for the petitioner would submit that the respondents 2 & 3/accused have accepted the sentences and paid the fine amount, the principles enshrined under Section 115 of the Evidence Act, are applicable. Therefore, the respondents 2 & 3/accused should be estopped from pleading acquittal. This apart, he would submit that the principles containing in the sub-section 4 of Section 401 of Cr.P.C., would be equally applicable in this case, since the petitioners are pleading for acquittal in the revision without filing an appeal, when the appeal remedy is available to them. Therefore, he would submit that the contention of the Learned Counsel appearing for the respondents 2 & 3/accused should not be accepted.

E. The Questions :

21.I have considered the rival contentions of the Learned Counsel on either side. I have gone through the material evidence on records and the Judgment of the Court below. Upon considering the submissions, the following questions arise for determination in this criminal revision:-

i) Whether or not the revision is filed by the victim/P.W.1 is maintainable, in view of the amendment to Section 372 of Cr.P.C.,?

ii) Whether in the revision filed by the victim/P.W.1 for enhancement of sentence, the Court can consider the plea of the accused for acquittal in the absence of any appeal filed by the accused persons in this case?

iii) If so, whether the findings of the Trial Court in respect of guilt of the offences under Section 447, 341, 294(b) and 506(ii) of I.P.C., interference by this Court?

iv) Whether if the accused is guilty of the



above offences, whether the sentencing by the Trial Court is proper and requires enhancement?

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Question No.1:

22.After filing of this criminal revision, in the year 2007, by Central Act 5 of 2009, a proviso was added to Section 372 of Cr.P.C., which reads as follows:-

"Section 372 : No appeal to lie unless otherwise provided. -

No appeal shall lie from any Judgment or Order of a Criminal Court except as provided for by this Code or by any other law for the time being in force:

¹[Provided that the victim shall have a right to prefer an appeal against any order passed by the Court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation, and such appeal shall lie to the Court to which an appeal ordinarily lies against the Order of conviction of such Court.] 1.Ins.by Act 5 of 2009, Section 29 (w.e.f. 31.12.2009]"

It may be seen that the proviso is very clear and categorical that it accords to the victim right to prefer the appeal;

- (i) against the order of acquitting the accused;
- (ii) convicting for lesser offenses; and
- (iii) Thirdly, for inadequate compensation.

Therefore, on plain reading of the said proviso, it is clear that it does not provide an appeal for enhancement. The Judgment of the Hon'ble Supreme Court of India relied upon by the Learned Counsel for the respondents 2 & 3/accused in Joseph Stephen and Ors. Vs. Santhanasamy and Ors., is an authority for proposition that as against the order of acquittal, an appeal is under Section 372 of Cr.P.C., therefore, in view of Section 401(4) of Cr.P.C., when there is appeal remedy, without filing an appeal, the revision is not maintainable and if appeal and revision are to be filed in the High Court itself, the High Court has to first pass an order treating the the revision as an appeal under Section 401(5) of Cr.P.C., without which it cannot entertain the revision.

23.On the other hand, the Hon'ble Supreme Court of India, in Parvinder Kansal Vs. State of NCT of Delhi and Another⁶, while considering the proviso to Section 372 of Cr.P.C., has held that the right of appeal of the victim is confined to only the above three eventualities and the victim has no right to file an appeal on the ground of inadequate sentence. It is useful to extract paragraph No.10 of the said Judgment, which



reads hereunder:-

"10.A reading of the proviso makes it clear that so far as victim's right of appeal is concerned, same is restricted to three eventualities, namely, acquittal of the accused; conviction of the accused for lesser offence; or for imposing inadequate compensation. While the victim is given opportunity to prefer appeal in the event of imposing inadequate compensation, but at the same time there is no provision for appeal by the victim for questioning the order of sentence as inadequate, whereas Section 377, Cr.PC gives the power to the State Government to prefer appeal for enhancement of sentence. While it is open for the State Government to prefer appeal for inadequate sentence under Section 377, Cr.PC but similarly no appeal can be maintained by victim under Section 372, Cr.PC on the ground of inadequate sentence. It is fairly well settled that the remedy of appeal is creature of the Statute. Unless same is provided either under Code of Criminal Procedure or by any other law for the time being in force no appeal, seeking enhancement of sentence at the instance of the victim, is maintainable. Further we are of the view that the High Court while referring to the judgment of this Court in the case of National Commission for Women v. State of Delhi (2010) 12 SCC 599 has rightly relied on the same and dismissed the appeal, as not maintainable."

Therefore, I hold that there is no provision to file an appeal for enhancement of sentence, therefore, only a revision is maintainable and the present revision is in order.

Question No.2:

24.To consider the question as to whether it will be open for the accused and the High Court to consider the plea of acquittal of the offence complained of in the revision filed by the victim / P.W.1 for enhancement of sentence, when the accused have paid the fine and have not chosen to file any appeal, firstly, it is the contention of the Learned Counsel appearing on behalf of the petitioner that by the act of the accused, paying a fine and not filing an appeal, it should be deemed that they have accepted the verdict and therefore, by virtue of Section 115 of the Evidence Act, 1872, on the principles of estoppel they must be precluded in contending otherwise. I reject this contention for two reasons:- (i)As stated by the Hon'ble Supreme Court of India, in the above Judgment of Parvinder Kansal Vs. State of NCT of Delhi and Another case, remedies of appeal, revision etc., are creatures of the statute providing the remedies of appeal or revision and decide and Section 115 viz., estoppel being a rule of evidence



or as a rule of prudence have no play in the matter; (ii) Secondly, even in the proviso under Section 357(2) Cr.P.C., payment of fine is mandatory before the filing of an appeal and such payment of fine cannot be taken as a conduct of the accused of admitting the verdict. In a given case, even though a person may be aggrieved by the finding of guilt may not choose to file an appeal considering the only fine is imposed as punishment. But, however, once the State or the victim seeks to enhance the punishment, he may choose to canvas the finding of the guilt.

25. Now, coming to the scheme of the Code of Criminal Procedure, Section 397 provides that the High Court or any Sessions Court may call for and examine any proceedings before any inferior Criminal Court within its local jurisdiction for the purpose of satisfying itself or himself as to the correctness of legality or priority of any finding or sentence or order recorded by or passed and as to the regularity of any such inferior Court.

26. Section 401 of Cr.P.C., provides that in the case of any proceedings the record which has been called by itself or which otherwise comes to its knowledge, the High Court may in its discretion exercise any of the powers of the Court of appeal under Sections 386, 389, 390, 391 of Cr.P.C., there are only three embargoes in Section 401(2)(3)(4) of Cr.P.C., whereby,

(i) Firstly, sub-section 2, no order can be made to the prejudice of the accused unless he has had an opportunity of being heard either personally or by pleader in his own defence.

(ii) The second embargo is that in exercise of power of revision, the High Court cannot convert acquittal into one of conviction.

(iii) The third embargo is that if an appeal lies against the order under revision and no appeal is filed, revision is not maintainable.

Sub-section (5) of 401 also vests the power of the High Court that in a given case, if a person has to file an appeal to the High Court and if he has erroneously filed a revision, the High Court can treat the Revision as an appeal. Thus, the powers exercisable in the revision are the powers exercisable by the Appellate Court. Therefore, as per Section 386(c) of Cr.P.C., in an appeal for an enhancement of a sentence, the High Court can reverse the finding and sentence and acquit or discharge the accused or order him to be retried by a Court competent to try the offence.



the Hon'ble Supreme Court of India, in the case of Pilot U.J.S. Chopra Vs. State of Bombay⁹, held that it is a well-established position in law that during the hearing of the notice for enhancement of sentence, the accused will have the right also to show-cause against his conviction. But, it has to be noted that the said judgment of the Hon'ble Supreme Court of India is based on Section 439(6) of the old Cr.P.C., which read as follows:-

" Notwithstanding anything contained in this section, any convicted person to whom an opportunity has been given under sub-section (2) of showing cause why his sentence should not be enhanced shall, in showing cause, be entitled also to show cause against his conviction.] "

However, the Original Section 439 of Cr.P.C., was substituted by the Amending Act to the old code, the following was the recommendation of the 41st Report of Law Commission, based on which the provision was amended:

"32.13. Sub-section(6) of section 439 says that a person required to show cause why his sentence should not be enhanced is entitled to show that his conviction is unsustainable although he may not have appealed against his conviction. The principle underlying this rule is sound; but as we are separately providing for "enhancement of sentence" through an appeal,³ this sub-section would be redundant, and we, therefore, propose to omit it.

There was a suggestion⁴ that the High Court should have power under section 439 to convert an order of acquittal into one of conviction. We do not think that that would be at all proper. An order of acquittal is, on appeal, capable of being altered to an order of conviction⁵, and that is sufficient for dealing with erroneous acquittals.

No other change is necessary in the scheme of revisional powers. [3. See para 31.39 to 31.43 above. 4. Home Ministry File No.F.27/3/55-Judl, II, App.1, Item 76 (Suggestion of the Inspector General of Police, Orissa). 5. Section 417.] "

Thereafter, when the new code came into force, as stated above, Section 401 provided for the powers exercisable by the appellate court.

28. Considering the new provisions as such, the Allahabad
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High Court in Hardeep Singh Vs. State of Uttar Pradesh⁷ had held that if even though the Revision was admitted on the point of sentence only, but, on account of technical defect pointed out, the conviction cannot be sustained. Hence, the Court is bound to interfere with the conviction. In Deo Narain Mandal Vs. State of U.P.⁸, the Hon'ble Supreme Court of India opined since notice of enhancement of sentence issued, it is but proper in law that the Court should hear the accused on merits of the case, also even the accused had not pressed his appeal on merits before the High Court in that case, as a matter of fact, the accused had preferred an appeal against reduced conviction before this Court. It is useful to extract paragraph No.5 of the judgment which is hereunder:-

"5. Not being satisfied with the said reduced conviction, the appellant has preferred this appeal. When this appeal came for preliminary hearing, this Court on 8-8-2003, while issuing notice on the SLP also issued notice to the appellant asking why the sentence awarded by the High Court should not be enhanced. Since the High Court has recorded that the appellant has not pressed his appeal on merits in the ordinary course, we would have accepted that statement recorded by the High Court and would have dismissed the appeal without going into the question on merits. However, since there is a notice in enhancement of the sentence by this Court, it is but proper in law that we should hear the appellant on merits of the case also."

Therefore, it is clear that even though the Revision is filed by P.W.1/victim for enhancement of sentence while showing cause for the sentence should be enhanced, the accused is entitled to show cause as to how the conviction is also unsustainable and how he is entitled for acquittal.

29. Mr. S. Sathia Chandran, Learned Counsel for the petitioner would make yet another objection basing on the Sub-Section (4) of 401 of Cr.P.C., that if they did not file an appeal they could not have filed a revision and therefore, he should not be allowed to plead for acquittal in the revision. This contention is not acceptable, because Section 401(4) of Cr.P.C., only prohibits the filing of revision, without filing an appeal. It does not in any manner curtail the power of the High Court to deal with the revision and the right of the accused to show cause against the conviction as such is not taken away by this provision.

30. For all the above reasons, I answer the question that in the revision is filed by the victim/de-facto complainant for



enhancement of sentence, the accused, who have not filed any appeal are entitled to show cause as to how the conviction itself is erroneous and the High Court will be well within its powers to consider the said plea and grant acquittal / discharge or to order re-trial as the case may be, but, however in tune with the principles of interference in exercise of the revisional jurisdiction.

Question No.3:

31.Now, coming to the plea of the respondents 2 & 3/accused canvassing the correctness of the conviction in respect of the various offences by the Trial Court, first, P.W.1 has deposed that after the Judgment in O.S.No.616 of 1986 when they were working on their land, the accused were standing on the public road and shouting at him, mentioning his caste name, and also threatening to kill him. P.W.2 has deposed that the accused removed the boundary stone and attempted to throw the same at them and using caste name and also using filthy language the accused abused them. The same is repeated by other witnesses P.W.3 and P.W.4 and they also had deposed that even while coming on the road, the accused had threatened by using caste name and threatening to eliminate P.W.1 and P.W.2. On the strength of the above evidence, by taking the evidence in Chief as correct, even without considering the defence of the accused about the falsity of the evidence, on the face of it, there is no evidence for criminal trespass. Similarly, there is no evidence at all for wrongful restraint. Therefore, the conviction by the Trial Court as well as the First Appellate Court for the offences under Section 447, 341 are absolutely unsustainable.

32.Coming to the submissions in respect of the offence under Section 294(b) of I.P.C., the Learned Counsel appearing for the respondents 2 & 3/accused would submit that firstly, except for the victims themselves and other relatives, who are all interested witnesses, there was no other public person in the place of occurrence, therefore, the offence under Section 294(b) of I.P.C., is not made out. The abuse should be by using sexually abusive / obscene words. In this case, P.W.1 has not mentioned of use of any other words except the caste name and only P.W.2 has mentioned two sexually obscene/filthy words. In this regard, P.W.11/the Investigating Officer has been cross-examined in which, he has stated as follows:-

“xxxx xxxxx, xxxxx xxxxxx என்று சாட்சி விஜயாவை திட்டியதாக
என் விசாரணையில் சொல்லவில்லை. xxxxx, xxxxx, xxx xxxxx என்ற
வாந்தைகள் என் விசாரணையில் சொல்லவில்லை.”

Therefore, when the contradiction is clearly brought on record and when P.W.1 and P.W.2 have not stated about the usage of any obscene words in their 161 Statements, which is brought on cross-examination of the Investigating Officer, the Trial Court as well as the First Appellate Court simply brushed aside this material contradiction and therefore, the conviction



for the offence under Section 294(b) is also unsustainable.

33. Now, coming to the offence under Section 506(ii) of I.P.C., the threat made by the respondents 2 & 3/accused has been consistently spoken P.W.1, P.W.2 and P.W.3 and it is also contained in the complaint /Ex.P-1. The contention of the Learned Counsel appearing for the respondents 2 & 3 /accused firstly is that empty threats should not be taken into account as intimidation. In this regard, the wholesome reading of the evidence, considering the background of the case, there is boundary dispute between the parties and that there are connected Civil and Criminal proceedings between the parties and when there is an order of possession in the Execution Petition and when P.W.1 and P.W.2, attempted to remove the vegetation/wild growth, when the accused persons in an aggressive manner approaching from the road side uttered these words, it cannot be considered as empty threat, as there is an attempt attempt to threaten the petitioners to omit to do the act which they are legally entitled to do and there is impending threat of person as well as to the property and therefore, it would definitely prevent PW-1 & PW2 from doing the acts which they were doing and therefore, as held by the Hon'ble Supreme Court of India in the Judgment cited by the Learned Counsel appearing for the respondents 2 & 3/accused viz., in Manik Taneja and Another Vs. State of Karnataka and Another case in paragraph No.11 as extracted above, the facts and circumstances of the case would amount to criminal intimidation.

34. The alternative submission of the Learned Counsel for the respondents 2 & 3/accused is that by relying upon the Judgment of the Hon'ble Supreme Court of India in Parminder Kaur alias P.P.Kaur alias Soni Vs. State of Punjab case, thereby, pleading that once the evidence and the testimony of P.W.1 is doubt in respect of the other charges, it would be unwise to rely upon the same evidence for a conviction for the offence under Section 506(ii) of I.P.C. But, it may be seen from the paragraph No.26 as extracted above itself, that the position may not be same, if there is corroboration and if the matter has been considered independently. Thus, this whole case is about the intimidation and the other offence viz., Section 3 (1)(x) of the SC/ST (POA) Act, by using caste name is disbelieved only to the extent that caste words were not mentioned in the First Information Report, when the complaint was given. Therefore, in the facts of this case, when P.W.1 and P.W.2/victims evidence is corroborated by P.W.3 and P.W.4 and the evidence of P.W.8/the Village Administrative Officer regarding the ownership of the various Survey numbers of the lands, therefore, the action of the accused was to intimidate the PW-1 and his family members from entering or cultivating the land in their possession. Therefore, offence under Section 506(ii) of I.P.C., is made out and therefore, I hold the conviction of the respondents 2 & 3/accused for the said offence is in order.



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Question No. IV.

35. Therefore, now to consider the sentence to be imposed for the offence under Section 506(ii) of I.P.C., the Learned Counsel for the petitioner had submitted that imposing of fine of Rs.5,000/- alone in respect of the offence of the criminal intimidation will not satisfy the dictum of the Hon'ble Supreme Court of India in the reported Judgment of State of Madhya Pradesh Vs. Suresh, mentioned above. Considering the theory of proportionality, submissions made by the accused relating to the similar complaints already and subsequently made, considering the gravity and nature of the offence, I am inclined to enhance the punishment in respect of the offence under Section 506(ii) of I.P.C. It is seen that the respondents 2 & 3/accused, were in prison for a period of 28 days after the enhancement of sentence was made earlier and the accused were taken to prison on 18.10.2019 and were released on bail by the Hon'ble Supreme Court of India by order dated CMP.No.5621 of 2019 in SLP.Crl.No.39205 of 2019, thereafter, were released from jail on 15.11.2019, I am inclined to impose the period undergone as the substantive sentence for the said offence under Section 506(ii) of I.P.C.

36. In the result, the Criminal Revision is disposed off in the following terms :-

(i) The Judgment of the Learned Principal Sessions Judge, Vellore in Spl.S.C.No.13 of 2015 dated 04.12.2006, is set aside in as much as it relates to the finding of the guilt of the respondents 2 & 3/accused in respect of the offence under Section 447, 341 and 294(b) of I.P.C., and the respondents 2 & 3/accused are acquitted of the said offenses. The fine amounts paid by them in respect of the said offences be refunded to them.

(ii) The Judgment of the Learned Principal Sessions Judge, Vellore in Spl.S.C.No.13 of 2005 dated 04.12.2006 is confirmed, in as much as it finds that the respondents 2 & 3/accused guilty for the offence under Section 506(ii) of I.P.C. However, the sentence in respect of the said offence is modified as imprisonment for the period already undergone by the respondents 2 & 3/accused and sum of Rs.5,000/- each.

Sd/-

Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar



To

1.The Principal District and Sessions Judge, Vellore.

2.The Deputy Superintendent of Police,
Katpadi, Vellore District. (Thiruvalam Police Station).

3.The Public Prosecutor, High Court of Madras.

Copy to:

The Section Officer,
Criminal Section,
High Court, Madras

+1 cc to Mr.V.Karthikeyan, Advocate Sr.NO.8206

+1 cc to Mr.S.Sathiyachandran, Advocate Sr.NO. 8622

Crl.R.C.No.1516 of 2013

mt (CO)

A.SK(24.02.2022)