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Crl.R.C.No.774 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.R.C.No.774 of 2018
and Crl.M.P.Nos.8833 & 8834 of 2018

S.unnikumar

... Petitioner

Vs.

State rep. by
The Inspector of Police,
W-20, All Women Police Station,
Saidapet, Chennai.
(Cr.No.3 of 2009)

... Respondent

PRAYER: Criminal Revision Petition is filed under Section 397 and 401 of the Code of Criminal Procedure, seeking to set aside the judgment in Crl.A.No.242 of 2017 dated 25.06.2018 passed by the VII Additional Sessions Judge, City Civil Court, Chennai, confirming the judgement in C.C.No.12691 of 2009 dated 25.07.2017 passed by the IX Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner : Mr.B.Kumarasamy

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



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ORDER

This Criminal Revision Petition is filed to set aside the judgement in Crl.A.No.242 of 2017 dated 25.06.2018 passed by the VII Additional Sessions Judge, City Civil Court, Chennai, confirming the judgement in C.C.No.12691 of 2009 dated 25.07.2017 passed by the IX Metropolitan Magistrate, Saidapet, Chennai, thereby convicted the petitioner for the offences under Section 4 of Tamil Nadu Prohibition of Harassment of Women (Amendment) Act, 2002 (in short "TNPHW Act" hereinafter).

2. The case of the prosecution is that the victim was working as a Receptionist in Central Warehousing Corporation, Regional Office, Chennai. While being so, on 28.06.2009, the petitioner herein, who was the car driver to the Regional Manger was said to have teased the victim by using double meaning words. It is also alleged that the petitioner saw the victim while she was adjusting her saree in the bathroom and stated that he had seen the same and he also tried to open his pant zip. Further, on another day, when the victim was in her seat, the petitioner came there and he said that daily he used to masturbate and sleep at night. Therefore,



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the victim lodged a complaint before her higher officials. Immediately, thereafter an enquiry officer was appointed and a detailed enquiry was conducted. During the enquiry, two charges were framed, out of which, one charge was proved and another was partly proved. However, the officials instead of taking action against the petitioner, transferred him to some other place and the Manager of the office also threatened the victim to withdraw the complaint. Hence, the complaint. On receipt of the same, the respondent registered the F.I.R in Cr.No.3 of 2009 for the offence punishable under Section 4 of TNPHW Act and 506(ii) IPC and completed the investigation, filed a final report and the same was taken cognizance by the trial Court for the said offences.

3. On the side of the prosecution, P.W.1 to P.W.8 were examined and marked Ex.P.1 and Ex.P.2. On the side of the petitioner, no one was examined and no documents were marked. On a perusal of oral and material evidences available on record, the trial Court found the petitioner guilty for the offences under Section 4 of TNPHW Act and sentenced him to undergo three years rigorous imprisonment and



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imposed fine of Rs.10,000/- in default, to undergo simple imprisonment for six months. Insofar as Section 506(ii) IPC is concerned, the petitioner was acquitted by the trial Court. Aggrieved by the same, the petitioner preferred appeal in Crl.A.No.242 of 2017 before the VII Additional Sessions Judge, City Civil Court, Chennai and the same was dismissed on 25.06.2018, confirming the order passed by the trial Court.

4. The learned counsel for the petitioner would submit that there was an inordinate delay of one year in lodging the complaint, which has also not disclosed the exact date, on which the occurrence took place. The F.I.R states that the issue was started from the date of her joining (i.e) during the year 2008. However, the complaint was received by the respondent only in the year 2009 and there is absolutely no proper explanation for the delay in lodgement of the complaint. He would further submit that P.W.3 categorically stated about the alleged occurrence that there was a wordy quarrel between P.W.2 and the petitioner and there was no whisper about the harassment towards P.W.1. Therefore, the P.W.3 failed to support the case of the prosecution. It is



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seen that P.W.5 and P.W.7, in their cross examination, categorically admitted that more than fifty persons were used to come to the office and 20 to 25 persons would sit in the reception. While that being so, there was absolutely no possibility for the petitioner to harass the victim. However, according to the defacto complainant, there was no specific allegation as against the petitioner to attract the offence under Section 4 of TNPHW Act. It is further submitted that the trial Court found that the charge under Section 506(ii) had not been proved as against the petitioner and another. Therefore, there is absolutely no evidence to convict the petitioner for the offence punishable under Section 4 of TNPHW Act. Further, the major portion of deposition is contrary in nature between the prosecution witnesses. Therefore, the prosecution failed to prove the charges. P.W.4, P.W.5 and P.W.7, who were the superior officials of P.W.1 deposed clearly that there was no possibility for the alleged occurrence as alleged by the victim/P.W.1. Therefore, P.W.1 is a petition monger and she always used to lodge complaint against her colleagues. Hence, the victim lodged the complaint with false averments and allegations.



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5. Even according to the evidence of P.W.7, the complaint lodged by the superior officer was closed as there was no evidence for sexual harassment. Even then both the Courts below have convicted the petitioner for the offence punishable under Section 4 of TNPHW Act. In support of the contention of the learned counsel, he also relied upon the judgement of this Court in the case of '**Panja @ Panchatcharam vs. State rep. by the Sub-Inspector of Police** reported in **2012 (1) MWN (Cr.) 194'**. It is useful to extract the relevant portion of the said judgement which reads as under:

"16. The First Appellate Court has not considered the said aspect in proper perspective and when once the First Appellate Court comes to the conclusion that it disbelieves the evidence of P.W.s 1 & 2 in respect of the IPC offences, the same has to be applied in respect of the offence under the special enactment, namely Section 4 of the Tamil nadu Prohibition of Harassment of Women Act. Hence, I am of the view that the prosecution has not proved that the Revision Petitioner/Accused is guilty of the offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act.

17.In the result:



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(a) The Crl.R.C. is allowed.

(b) The conviction and the sentence passed against the Revision Petitioner/Accused in respect of Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, are set aside and he is acquitted of the said offence.

(c)

(d)"

6. Per contra, the learned Government Advocate (Crl.Side) would submit that the prosecution to bring the charge under Section 4 of TNPHW Act and Section 506(ii) IPC, examined P.W.1 to P.W.8 and marked Ex.P1 and Ex.P2. Though there was a delay in lodgement of the complaint before the respondent, immediately after the alleged occurrence, the victim lodged the complaint before the superior officials of the company. On receipt of the said complaint, the enquiry officer was appointed and a detailed enquiry was conducted by P.W.6. and a report was submitted, as a result of which two charges were framed, out of which, one charge was proved and another was partly proved. Thereafter, the petitioner was transferred from the office to another place. However, the superior officials failed to lodge any complaint before the police and as such the victim was constrained to lodge the complaint in the year



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2009. He would further submit that the witnesses P.W.1 and P.W.2 corroborated and proved the case of the prosecution. As far as the allegation to attract the offence under Section 506(ii) is concerned, after completion of the enquiry report, A2 and the petitioner herein threatened the victim to withdraw the complaint. Therefore, the respondent registered the F.I.R for the offence under Section 4 of TNPHW Act and Section 506(ii) IPC. Thereafter, the trial Court found that there was no evidence to attract the offence under Section 506(ii) IPC and acquitted the petitioner for the said offence. However, it does not mean that there is no offence to prove the charge under Section 4 of TNPHW Act. Therefore, both the Courts accordingly held that the prosecution proved the case beyond any doubt and convicted the petitioner. Hence, he prays for dismissal of the petition.

7. Heard Mr.B.Kumarasamy, learned counsel for the petitioner and Mr.A.Gopinath, learned Government Advocate (Crl.Side) for the respondent.



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8. It is seen that there are totally two accused, in which the petitioner is arrayed as A1. Based on the complaint lodged by the victim, who was examined as P.W.1, the respondent registered the F.I.R in Cr.No.3 of 2009 for the offences under Section 4 of TNPHW Act and Section 506(ii) IPC as against A1 and A2. After completion of the investigation, he filed a final report and the same was taken cognizance by the trial Court. The trial Court found that A2 was not guilty and acquitted him and the petitioner was convicted for the offence under Section 4 of TNPHW Act and he was acquitted for the offence under Section 506(ii) IPC. In order to bring the charges, the prosecution examined P.W.1 to P.W.8, in which the victim was examined as P.W.1.

9. On a perusal of the evidences of P.W.1, it reveals that when she went to the bathroom to adjust her saree, the petitioner had seen the same and informed her about the same. When the victim shouted, he removed his pant and tried to open his pant zip and also he used to create some signs and eve tease the victim. On the other day, when the victim was sitting alone, the petitioner used filthy and sexually abusive words and



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called her for his sexual needs. Immediately, the victim lodged a complaint to her superior official. On receipt of the said complaint, a committee was formed, an enquiry officer was appointed, who was examined as P.W.6. On the complaint, two charges were levelled against the petitioner, one charge was completely proved and another was partly proved. In spite of enquiry report, no action was taken as against the petitioner. The higher official namely A2, instead of taking action on the enquiry report as against the petitioner, he threatened the victim to withdraw the complaint. Therefore, the victim was constrained to lodge the complaint before the respondent police, which was marked as Ex.P.1 and the respondent registered the F.I.R, which was marked as Ex.P.2.

10. It is pertinent to note that at the time of occurrence, P.W.2 was also present and she deposed and corroborated the evidence of P.W.1. In fact, the petitioner removed his pant and he had shown to P.W.1 and P.W.2. P.W.3, who is a retired Army person working in the same office deposed that he had seen the occurrence while the petitioner was removing is pant in front of P.W.1 and P.W.2. In that regard, he was



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enquired by the enquiry officer.

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11. Further, P.W.5, who was one of the member of the enquiry committee, after completion of the enquiry refused to take appropriate action against the petitioner. P.W.6, who was the enquiry officer conducted enquiry and submitted the enquiry report. As per the report, there was two charges framed as against the petition, in which, one charge was completely proved and another was partly proved. However, he was not aware about the final order passed by the Department. Therefore, all the prosecution cases categorically deposed that the petitioner had indulged in harassing P.W.1 and P.W.2.

12. The learned counsel for the petitioner vehemently contended that when the trial Court found that the petitioner was not guilty for the offence under Section 506(ii) IPC, as such the same would also be applied for the other charge under Section 4 of TNPHW Act. It is seen from the records, the respondent registered the F.I.R for the offence under Section 506(ii) IPC on the allegation that after submission of the



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enquiry report, the second accused threatened the victim to withdraw the complaint instead of taking action on the enquiry report as against the petitioner herein. However, the prosecution failed to prove the said charge and the trial Court likely acquitted the petitioner for the offence under Section 506(ii) IPC, whereas the main charge is under Section 4 of TNPHW Act as against the petitioner. Therefore, there is no material to attract the offence under Section 506(ii) IPC, which does not mean that the trial Court shall not acquit the petitioner for the offence under Section 4 of TNPHW Act. Therefore, the judgement cited by the petitioner need not be helpful for the case on hand.

13. In view of the above, this Court finds no infirmity or illegality in the order passed by the Courts below and the conviction as against the petitioner does not require any interference by this Court. However, insofar as the sentence is concerned, the petitioner was sentenced to undergo three years rigorous imprisonment and pay fine of Rs.10,000/- in default to undergo simple imprisonment for six months for the offence under Section 4 of TNPHW Act.



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14. This Court, considering the age of the petitioner is inclined to reduce the sentence from three years to nine months and enhance the fine amount from Rs.10,000/- to the tune of Rs.25,000/-(Rupees Twenty Five Thousand Only) payable to the victim within a period of two weeks from today i.e 10.10.2022 in default to undergo simple imprisonment for a period of three months for the offence under Section 4 of TNPHW Act.

15. Accordingly, this Criminal Revision Petition is partly allowed. Consequently, connected Miscellaneous Petitions are closed.

10.10.2022

Index: Yes/No

Speaking/Non-speaking order

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To

1. The VII Additional Sessions Judge, City Civil Court, Chennai

2. The IX Metropolitan Magistrate, Saidapet, Chennai.

3. The Inspector of Police,
W-20, All Women Police Station,
Saidapet, Chennai.

4. The Public Prosecutor,
Madras High Court.



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G.K.ILANTHIRAIYAN, J.,

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