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CrI.R.C.No.333 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.10.2022

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

CrI.R.C.No.333 of 2021

Sekar

... Petitioner

..VS..

State Represented by its
Sub Inspector of Police,
Erumapatti Police Station,
Namakkal District,
Crime No.128 of 2018.

... Respondent

Criminal Revision Case filed under Sections 397 r/w 401 Cr.P.C to call for the entire records connected with order of conviction and sentence passed on the petitioner in C.C.No.236 of 2020 dated 01.12.2020 by the learned Judicial Magistrate, Sendamangalam, Namakkal District and the subsequent order of the confirmation of the said conviction and sentence passed by the learned Principal Sessions Judge, Namakkal in C.A.No.5 of 2021 dated 09.04.2021 and quash the same.

For Petitioner	:	Ms.G.Vaishali
For Respondent	:	Mr.S.Sugendran Additional Public Prosecutor



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ORDER

This revision case has been preferred challenging the judgment dated 09.04.2021 passed in C.A.No.5 of 2021 by the learned Principal Sessions Judge, Namakkal.

2. The case of the prosecution is that the *de-facto* complainant one Subha and the petitioner/accused are having money transaction between them. On 01.06.2018 at about 6 p.m., a quarrel arose between them and at that time the accused outraged the modesty of the *de-facto* complainant and thereby, he committed the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002 [hereinafter referred to as 'TNPHW Act' for the sake of convenience].

3. On the complaint given by P.W.1/*de facto* complainant, the respondent/Police registered a case in Crime No.128 of 2018 against the petitioner for the offence under Section 4 of TNPHW Act. After



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investigation, the respondent/Police laid a charge sheet before the learned Judicial Magistrate, Sendamangalam in C.C.No.236 of 2020. After completing the formalities, the learned Magistrate framed charges against the petitioner for the offence under Section 4 of TNPHW Act.

4. After trial, the trial Court found guilty of the petitioner/accused for the above charges and convicted and sentenced the petitioner to undergo simple imprisonment for a period of six months and to pay a fine of Rs.10,000/-, in default, to undergo simple imprisonment for three weeks. Challenging the said judgment of conviction and sentence, the petitioner had preferred an appeal in Crl.A.No.5 of 2021 before the learned Principal Sessions Judge, Namakkal. After hearing the arguments, the appellate Court as a final Court of fact finding has re-appreciated the entire materials and dismissed the appeal and confirmed the conviction and sentence passed by the trial Court. Aggrieved by the same, the petitioner has filed the present revision.



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5. The learned counsel for the petitioner submitted that there was a previous enmity between the petitioner and the *de-facto* complainant. The *de-facto* complainant cheated the petitioner by grabbing the amount of Rs.5,00,000/- from him assuring that she will secure job in abroad. Due to non-compliance, the petitioner filed a complaint against the *de-facto* complainant on 29.04.2018 itself. Apart from that the petitioner also filed a private complaint under Section 200 Cr.P.C against her for the offence under Section 138 of Negotiable Instruments Act. In order to wreck vengeance against the petitioner and also to escape from the liability of the cheque amount, the *de-facto* complainant has put up a false case against the petitioner. Further, the mahazar witnesses P.W.5 and P.W.6 were turned hostile and they have not supported the case of the prosecution. Even the brother of the *de facto* complainant also stated that he does not know anything about the said occurrence. P.W.2/mother of the *de facto* complainant, P.W.3/sister-in-law of the *de facto* complainant have also admitted that there was a money transaction between the petitioner and the *de facto* complainant.



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6. The learned counsel for the petitioner further submitted that the eye witnesses P.W.2 and P.W.3 are none other than the mother and sister-in-law of the *de facto* complainant and hence, they are highly interested witnesses and no independent witness was examined in this case. Both the Courts below failed to appreciate the entire oral and documentary evidence and wrongly convicted the petitioner. As per the prosecution at the time of occurrence, the petitioner outraged the modesty of the *de facto* complainant and also tore her saree and blouse, but the Investigating Officer has admitted that torn blouse and saree have not been recovered and hence, the prosecution has failed to establish its case beyond all reasonable doubt. He further submitted that the Investigating Officer has admitted that there was a previous enmity between the petitioner and the *de facto* complainant. The trial Court and the appellate Court failed to appreciate the entire evidence and convicted the petitioner only based on the evidence of the *de facto* complainant. However, the evidence of the victim is not trust worthy. There was contradictions between the evidence of P.W.1/victim and also other witnesses. P.W.1 in



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her evidence had stated that soon after the occurrence, the Village President and yet another person rushed to the spot, but they have not been examined as witnesses. As per the mahazar witnesses/P.W.5 and P.W.6, the Investigating Officer came to the occurrence place on 01.06.2018 itself, whereas the complaint was given only on 02.06.2018. Therefore, there are material contradictions which will go to the root of the case of the prosecution. The trial Court and the appellate Court failed to appreciate the same and hence, the benefit of doubt should be extended to the petitioner and hence, the judgments of the Courts below warrants interference of this Court.

7. The learned Additional Public Prosecutor appearing for the respondent submitted that the victim was examined as P.W.1 and she had clearly narrated that the petitioner came to her house on 01.06.2018 and harassed her by pulling her saree and teared her blouse. No one was present at the time of occurrence, but after hearing the sound of the victim, P.W.2 and P.W.3, who are the mother and sister-in-law of the



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victim went to the occurrence place. After seeing the neighbours, the petitioner rushed out from the spot. Further the evidence of P.W.2 and P.W.3 are corroborated with the evidence of P.W.7, who is also one of the eye witnesses to the said occurrence. Therefore, from the evidence of P.W.1, P.W.2, P.W.3 and P.W.7 the prosecution has proved its case beyond all reasonable doubt. In a case of this nature, the evidence of the victim alone is sufficient and no evidence of independent witnesses can be expected. Even the victim has stated that no independent witness or other witness was present at the time of occurrence. Therefore, there is no reason to discard the evidence of P.W.1. Both the Courts below rightly appreciated and re-appreciated the entire evidence and convicted and sentenced the petitioner.

8. Heard the learned counsel for the petitioner and the learned counsel for the respondent and also perused the materials available on record.



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9. The specific case of the prosecution is that the petitioner and the *de facto* complainant are known to each other and they also had money transaction between them. Both the petitioner and the *de facto* complainant are close to each other and during one occasion, the petitioner took all the jewels of the *de facto* complainant. Since the petitioner has not returned the same, a dispute arose between them. In order to take vengeance, on 01.06.2018 the petitioner went to the house of the victim and harassed her and the same went to the extent that the petitioner pulled her saree and teared her blouse. Even next day morning also, the petitioner went to her house and harassed her. Therefore, the *de facto* complainant lodged a complaint against the petitioner on 02.06.2018. After investigation, the respondent/Police filed a charge sheet against the petitioner.

10. In order to substantiate the case of the prosecution before the trial Court, on the side of the prosecution as many as 8 witnesses were examined as P.W.1 to P.W.8. Out of which, the victim was examined as P.W.1, mother of the victim was examined as P.W.2 and sister-in-law of



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the victim was examined as P.W.3.

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11. A careful reading of the evidence of P.W.1 would show that there was a money transaction between the petitioner and the victim. At one point of time, the petitioner took the jewellerys of the victim and not returned back the same, hence, the victim filed a complaint against the petitioner. Hence, the petitioner has animosity with her and that on 01.06.2018 at about 6 p.m he went to the house of the victim and scolded her and also pulled her saree and teared her blouse. When the defacto complainant raised alarm, her family members and two of the villagers came to the place of occurrence. Thereafter, the victim preferred a complaint against the petitioner. Further, there is no direct eye witness to the said occurrence, except P.W.1. The prosecution witnesses P.W.2, P.W.3, P.W.7 are not eye witnesses to the said occurrence, but soon after the occurrence and on hearing the voice of the victim they rushed to the place of occurrence. They have seen that the revision petitioner rushed out from the place of occurrence and the victim was suffered with torn clothes.



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12. In a case of this nature, the presence of independent eye witness is mostly improbable. If the evidence of sole witness is cogent, credible and trustworthy, conviction is permissible. Further, it is not the case of the prosecution that the occurrence was taken in the public place or public view or in the presence of other witnesses, but the occurrence had happened only within the house. P.Ws.2, 3 and 7 have clearly deposed that after hearing the sound of the victim they rushed to the house of the victim and on seeing them, the petitioner rushed out from the place of occurrence.

13. In the present case, the main flaw on the part of the investigation is that the Investigating Officer himself admitted that he has not recovered the torn blouse and saree and he has also not given any reason for that. It is not surprised to note that in our State the Investigating Officers are very lethargic in conducting investigation either they are corruptive or inefficient. The innocent victims are suffering



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because of the lethargic attitude of the investigating officer. The present case is one of the good examples for that. Though in the complaint itself, the *de facto* complainant herself stated that the revision petitioner entered into her house on a particular date and harassed her and also pulled her saree and teared her blouse, during the cross examination, the Investigating Officer/P.W.8 himself admitted that he has not recovered any material objects from the victim. Once the Investigating Officer investigated the matter and filed the charge sheet before the Court below by stating that the complaint given by the *de facto* complainant is true, it is the duty of the Investigating Officer to recover all the material objects and immediately they should be forwarded to the jurisdictional Magistrate, whereas, the Investigating Officer has not done so. In most of the cases, they do not recover the material objects, even, if they recovered, they do not send the same to the jurisdictional Magistrate. Though there are legal provisions and standing orders stating that all the material objects and documents which were recovered from the victims during the investigation have to be submitted before the jurisdictional Magistrate or



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Special Court forthwith, but most of the cases, the Investigating Officers are not performing their duties and they are not following the standing orders and decisions of the Hon'ble Apex Court and this Court. The fact remains that due to non performance of the investigating agency, the victim should not be suffered. Because of defect in investigation, most of the culprits are escaping from the clutches of law, that is the reason why crimes are increased especially, offence against women.

14. In the case on hand there is a defect on the part of the investigation conducted by the Investigating Officer. It is settled law that the defect in investigation is not a sole ground to disbelieve the evidence of the prosecutrix and lapses on the part of prosecution should not lead to unmerited acquittal, subject to rider that in such a situation evidence on record should be clinching, so that lapses of prosecution can be condoned. In a case of this nature, if the evidence of the victim inspires confidence of the Court, the same can be considered by the Court to convict the accused. In the case on hand, the evidence of the victim inspires confidence of this Court.



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15. Considering the facts and circumstances this Court finds that the prosecution has proved its case beyond reasonable doubt and with cogent evidence and the trial Court has rightly appreciated the entire evidence and convicted and sentenced the petitioner as above and the same was rightly re-appreciated and confirmed by the Appellate Court.

16. The scope of revision is very limited. The Trial Court and the Appellate Court had already appreciated and re-appreciated the entire evidence and also given findings. While exercising the revisional jurisdiction, this Court cannot sit in the arm chair of the Appellate Court and re-appreciate the evidence. However, this Court has to see whether there is any perversity or infirmity in the judgments of the Courts below.

17. On a combined reading of the entire materials and judgments of both the Courts below, this Court does not find any perversity in the judgments of the Courts below. More so, the victim has clearly spoken about the incident and P.W.2, P.W.3 and P.W.7 also corroborated the said occurrence.



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18. In view of the above, this Criminal Revision Case is dismissed and the judgment dated 09.04.2021 passed in C.A.No.5 of 2021 by the learned Principal Sessions Judge, Namakkal is confirmed.

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Index: Yes/No
Speaking Order/Non-Speaking Order
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To

- 1.The Judicial Magistrate,
Sendamangalam,
Namakkal District.
- 2.The Principal Sessions Judge,
Namakkal.
- 3.The Public Prosecutor,
High Court, Madras.
- 4.The Sub Inspector of Police,
Erumapatti Police Station,
Namakkal District.



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P.VELMURUGAN, J.

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