



BAIL SLIP

The Petitioner/Accused namely Kumar @ Stephenraj (Age 40), S/o.Rayappan was directed to be released on Bail in and by the Order of this Court dated 10/03/2017 and made in Crl.M.P.Nos.3739 and 3740 of 2017 in Crl.R.C.No.404 of 2017.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.01.2022

CORAM:

THE HONOURABLE MS.JUSTICE R.N.MANJULA

CRL.R.C.NO.404 OF 2017

Kumar @ Stephenraj

... Petitioner

.Vs.

The State Rep. by
The Inspector of Police,
Neyveli Thermal Police Station,
Crime No.33 of 2014.

... Respondent

PRAYER:-

Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the judgment of the learned District Munsif cum Judicial Magistrate, Neyveli in S.T.C.No.729 of 2014 dated 05.11.2016 and confirmed by the III Additional District and Sessions Court, Cuddalore at Vridhachalam dated 13.02.2017 in C.A.No.101 of 2016.

For Petitioner : Mr.S.Vinoth Kumar
(Legal aid)

For Respondent : Mr.Gopinath
Government Advocate (Crl. side)

ORDER

This Criminal Revision Case has been preferred challenging the judgment of the learned III Additional District and Sessions Judge, Cuddalore at Virudhachalam, dated 13.02.2017 made in C.A.No.101 of 2016, which confirmed the judgment of the learned



District Munsif cum Judicial Magistrate, Neyveli, dated 05.11.2016 passed in S.T.C.No.729 of 2014.

2. The revision petitioner is the accused and the defacto complainant/PW.1 is the wife of the revision petitioner. On the complaint given by PW.1 against the revision petitioner that he harassed her by developing illicit intimacy with another woman; when PW.1 was at her mother's house, on 14.03.2003 at about 1.30 p.m., the revision petitioner trespassed into her mother's house and abused her in filthy language and pulled her child and went away in his two wheeler; when the neighbour /PW.5 rushed to rescue the child, the accused abused her also in filthy language and gone away.

3. A case was registered by PW.7/the Sub Inspector of Police on the basis of the above complaint in Crime No.33 of 2014 of Neyveli Thermal Police Station for the offence under Sections 294 (b), 448 and 506(i) IPC. After registering the case, he took up the case for investigation and he visited the place of occurrence and prepared a rough sketch and the observation mahazar in the presence of the witnesses. He also enquired the witnesses and obtained their statement. The accused was surrendered before the Court. After completing the investigation, a final report was filed against the accused under Sections.294 (b), 448 and 506(i) IPC.

4. After the case was taken on file and on being satisfied with the materials produced before the Court, the learned trial Judge framed charges against the accused for the offences under Sections 294(b), 448 and 506 (i) IPC and the accused was questioned. Since the accused pleaded innocence and claimed to be tried, trial was conducted.

5. During the course of trial, on the side of the prosecution seven (7) witnesses were examined as PW.1 to P.W.7 and four (4) documents have been marked as Ex.P.1 to Ex.P4. When the incriminating evidence available on record is put to the accused under Section 313 Cr.P.C., he denied the same. On the side of the defence, no witness was examined and no document was marked.

6. After the conclusion of the trial and on considering the materials available on record, the learned trial Judge found the accused guilty and convicted him for the offences under Sections 294 (b) and 448 IPC and sentenced him to undergo one month Simple Imprisonment for the offence under Section 294(b) IPC and to undergo two months Simple Imprisonment for the offence under Section 448 IPC. No fine. The period of imprisonment shall run consecutively.



7. Against the said conviction, the petitioner/accused has filed an appeal in C.A.No.101 of 2016, before the learned III Additional District and Sessions Judge, Cuddalore, which was dismissed on 13.02.2017, confirming the judgment of the trial Court. Aggrieved over the said dismissal, this Criminal Revision Case has been filed by the petitioner/accused.

8. Heard the learned counsel for the petitioner/accused and the learned Government Advocate (Crl.Side) for the State.

9. The learned counsel for the revision petitioner/accused submitted that the offence u/s.448 of IPC would not be made out for the reasons that the accused is none other than the husband of PW.1 and he had just visited the house of his wife; the accused did not abuse PW.1 or any one in public view; even the prosecution witnesses have not stated the similar words in connection with the charge under Section 294 (b) IPC and they have given contradictory statement before the Court. Hence the revision petition has to be allowed.

10. The learned Government Advocate (Crl.side) appearing for the State submitted that the occurrence had taken place in public view; the revision petitioner had abused PW.1 and PW.5 in filthy language while he was forcefully taking his child from them and about to leave the place in his two wheeler; the act was witnessed by other neighbours; since PW.1 was residing at her mother's house due to some misunderstanding between the couples, the accused cannot say that he went to the place of occurrence as a matter of right. Hence the criminal revision case should be dismissed.

11. Points for consideration:

Whether the finding and judgment of the lower appellate Court suffer from any unfairness, impropriety or illegality?.

12. The fact that the accused and the defacto complainant are the husband and wife was not denied. Due to some marital dispute, there was some misunderstanding between the couples. It is alleged that when their marriage is in subsistence, the revision petitioner developed an illegal affair with some other woman and that got aggravated the problem between the couples. At the time of occurrence, PW.1 was residing at her mother's house with her child. Her evidence would reveal that the accused had been to the house of PW.1's mother and grabbed the child by force and abused PW.1 and PW.5 who came to rescue the child. When the couples were not in cordial terms, it is highly unlikely that the accused paid a casual visit to his mother-in-law's house. The revision petitioner/accused had gone to place of occurrence and he also taken away the child from PW.1 and her



mother. The above conduct of the accused would reveal his intention to trespass into P.W.1 mother's house to commit the offence. So the presence of the revision petitioner at the house of PW.1's mother cannot be construed as casual visit.

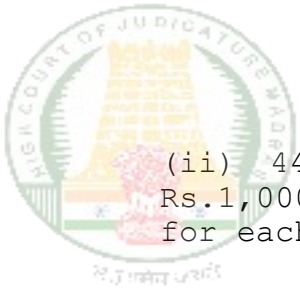
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13. The revision petitioner not only abused PW.1 and also abused PW.5, when he came to rescue the child. When the accused took the child and about to leave away in his motorcycle, PW.5 met him on the road and prevented him from carrying the child. The accused abused her in filthy words while he was taking away his two wheeler. So all these could have been happened only in the street of PW.1 mother's house. While the accused was abusing some one, he would not have chosen one particular word for abusing. So, it is quite natural that the prosecution witness would tell different words uttered by the revision petitioner. So it cannot be the reason for the Courts to come to a conclusion that the accused had not committed any offence under Section 294 (b) IPC. The trial Court as well as the lower appellate Court had correctly appreciated the evidence and recorded the guilt of the accused for committing for the offence under Section 294 (b) IPC and convicted him.

14. It is seen from the records that the revision petitioner had filed a petition under Section 360 of Cr.P.C for getting the benefit of probation which is open to the first offender. However, his petition was dismissed by the lower appellate Court for the reason that he had filed the petition shortly after the judgment is pronounced. During the arguments, the learned counsel for the revision petitioner submitted that since the case has arisen out of misunderstanding between the couples and it is a domestic issue, some lenience should be shown in the punishment. He further submitted that the accused is the first offender and he should be given with the benefits under Section 360 IPC.

15. Though the accused is said to be the first offender, this is not the offence which could have been committed against any other person. He had taken away his own child and intimidated his wife and his in-laws. If such violent act of the revision petitioner went without any punishment, he will be emboldened to repeat it again. In order to deter his violent attitude he should be awarded with some appropriate punishment. Considering the nature of the offence and other attending circumstances, I feel that punishment for the offence could be imposed in terms of fine instead of imprisonment.

16. In the result, the Criminal Revision Case is partly allowed and the judgment of the learned District Munsif cum Judicial Magistrate is modified to the extent that the accused is found guilty for the offences under Sections (i) 294 (b) and



(ii) 448 IPC and convicted and sentenced to pay a fine of Rs.1,000/-, in default to undergo one month Simple Imprisonment for each offence instead of imprisonment.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The III Additional District and Sessions Court,
Cuddalore at Vridhachalam.
2. The District Munsif cum Judicial Magistrate,
Neyveli.
3. The Chief Judicial Magistrate,
Cuddalore. (For Information)
4. The Inspector of Police,
Neyveli Thermal Police Station,
Neyveli.
5. The Public Prosecutor,
High Court, Madras.

Copy To:-

The Section Officer,
Criminal Section,
High Court of Madras.

+1cc to Mr.S.Vinoth Kumar, Advocate, S.R.No.2594

CRL.R.C.NO.404 OF 2017

PL(CO)
PBS/15/02/2022