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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.09.2021

PRONOUNCED ON : 04.02.2022

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Cr1.R.C.No.1366 of 2019

Jayabal ...Petitioner/Appellant/De-facto Complainant

Vs.

1.Purushoth
2.Sakthivel
3.Ranganathan
4.Adhi Naidu

...Respondents/Respondents/Accused

Criminal Revision Case filed under Sections 397 read with Section 401 of Cr.P.C., to set aside the judgment dated 19.08.2019 made in C.A.No.91 of 2018 by the learned II Addl. Sessions Judge, Tindivanam and consequently, set aside the acquittal of the respondents by the learned Judicial Magistrate, Gingee in C.C.No.94 of 2017 by his judgment dated 19.07.2018.

For Petitioner : Mr.R.Sankaranarayanan

For Respondent : Mr.V.Suguna

O R D E R

This Criminal Revision Case is filed to set aside the judgment dated 19.08.2019 passed in C.A.No.91 of 2018 by the learned II Addl. Sessions Judge, Tindivanam and consequently, to set aside the acquittal of the respondents by the learned Judicial Magistrate, Gingee in C.C.No.94 of 2017 by the judgment dated 19.07.2018.

2.The petitioner is the de-facto complainant has filed a complaint before the Sub-Inspector of Police, Gingee Police Station. On receipt of such complaint, the police registered a case against the respondents/accused in Crime No.234 of 2015 for the offence under Sections 294(b) of IPC r/w Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, and Sections 448,



352 and 506(ii) of IPC and Section 323 of IPC. After completion of investigation, the police laid a charge sheet before the learned Judicial Magistrate, Gingee. The learned Magistrate, taken the charge sheet on file in C.C.No.94 of 2017. After completing the formalities, the learned Magistrate framed the charge against the first respondent/accused for offence under Sections 294(b) of IPC r/w Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, the second respondent/accused for the offence under Sections 448, 352 and 506(ii)IPC and the third and fourth respondents for the offence under Sections 323 IPC.

3.After framing of charges, in order to substantiate the case, on the side of the prosecution, during the trial, 11 witnesses were examined as P.W.1 to P.W.11 and 7 documents were marked as Ex.P.1 to Ex.P.7 and no material object was exhibited. After completing the examination of all the prosecution witnesses, incriminating circumstances culled out from the evidence of prosecution witnesses put before the respondents/accused, by questioning under section 313 Cr.P.C, they denied the same as false and pleaded not guilty. On the side of the defence, no oral and documentary evidence was produced.

4.On completion of trial, after hearing the arguments advanced on either side and considered the materials, the trial Court found not guilty of the respondents/accused and acquitted them from all the charges. Challenging the said judgment of acquittal passed by the learned Judicial Magistrate, Gingee, the revision petitioner/de-facto complainant filed an appeal before Principal District and Sessions Judge, Villupuram. The learned Principal Sessions Judge taken the case on file in CrI.A.No.91 of 2018 and the case was made over to the II Additional Sessions Judge, Thindivanam, for disposal. The learned II Additional Sessions Judge, after hearing the arguments advanced on either side and dismissed the appeal. Challenging the judgment of the dismissal passed by the Additional Sessions Judge, the de-facto complainant has filed the present revision before this Court.

5.The learned counsel appearing for the petitioner would submit that there is an enmity between the revision petitioner/de-facto complainant and the respondents/accused regarding the repayment of loan borrowed by the revision petitioner from the respondents family. Since the petitioner/de-facto complainant could not repay the loan, the respondents/accused approached the family members of the petitioner and misbehaved with them and also beaten them and drove away from their house and locked the house. At that time,



the petitioner was not in the house. When the petitioner came to the house, they informed and later, he approached the Gingee police and filed a complaint. Therefore, the Gingee Police registered a case against the respondents/accused and after investigation, laid a charge sheet before the learned Judicial Magistrate, Gingee. Further, the learned counsel would submit that the revision petitioner herein was examined as P.W.1 and his wife, who is an injured witness, was examined as P.W.2 and one of the victim was examined as P.W.7 and the Doctor gave treatment to P.W.2, was examined as P.W.8. The magazer witnesses were examined as D.W.5 and D.W.6, who have categorically stated about the occurrence and the investigation. The independent witnesses P.W.3 and P.W.4 were said to have seen the occurrence, but, they turned hostile. Normally, in the village, the people would not support any one of the families, because they are neither kith and kin or relatives or known persons and well wishers. Since P.W.3 and P.W.4 had turned hostile, the testimony of the injured witnesses P.W.2 and P.W.7, cannot be ignored.

6. Further the learned counsel would submit that the learned Magistrate failed to appreciate the evidence that already there was an enmity between both the family regarding money transaction. During the relevant period, the petitioner did not repay the money. Therefore, there was a quarrel between them. P.W.2 and P.W.7, who are the injured witnesses, have categorically stated about the misbehaviour of the respondents. When the Doctor, who gave treatment to the injured witnesses, has stated about the injuries sustained by P.W.2, the learned Magistrate failed to appreciate the evidence and simply rejected the evidence of the injured witnesses and eye witnesses and extended the benefits in favour of the respondents and acquitted them from all the charges. When the petitioner/de-facto complainant approached the learned Sessions Judge, the learned Sessions Judge also failed to re-appreciate the evidence. The appellate Court is a final Court of fact finding, which was necessarily to re-appreciate the evidence and gave independent findings. Further, in this case, the learned Additional Sessions Judge failed to re-appreciate the evidence independently and simply endorsed the view of the learned Magistrate and dismissed the appeal, which warrants interference of this Court.

7. The learned counsel appearing for the respondents/accused would submit that already there is an enmity between the petitioner/de-facto complainant and the respondents' family. The petitioner borrowed a sum of Rs.20,000/- from the third respondent and Rs.30,000/- from the second respondent and he did not repay the same. In order to cheat the creditors, he has acted rudely and also made false complaint. In order to escape



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from the liability, he has foisted a false case against the respondents. On the ill-advise of the petitioner's side advocate, P.W.1 and P.W.7 categorically admitted that the revision petitioner/de-facto complainant borrowed money from the respondents and due to drought, he was not able to repay the amount and he also said that he will mortgage his lands and repay the amount. Since the petitioner did not repay the money, the respondents also filed a complaint against the petitioner before the Gingee Police Station and the same is also pending. Therefore, in order to wreck vengeance, the petitioner/de-facto complainant foisted a false case against the respondents. Further, the learned counsel would submit that the medical evidence was also not corroborated with the eye witnesses. Since the independent witnesses have turned hostile, they have not supported the case of the prosecution. Even P.W.2 has stated that she does not know the content of the complaint because she does not know to read and write. Since the prosecution failed to establish its case beyond all reasonable doubts and not substantiated the charges, the trial Court as well as the appellate Court rightly appreciated and re-appreciated the evidence respectively and acquitted the respondents/accused extended the benefit of doubts in favour of the respondents. Hence he prays for dismissal of the revision. Further, the learned counsel would submit that the revision Court cannot interfere with the concurrent judgment of the trial Court as well as the appellate Court, unless there is compelled circumstances and there is no perversity in the judgment of either the trial Court or the appellate Court, the revision Court cannot interfere with the concurrent judgment of the trial Court, more fully, in the judgment of acquittal. Therefore, there is no merit in the revision and the same is liable to be dismissed.

8. Heard Mr.R.Sankaranarayanan, learned counsel appearing for the petitioner and M/s. V.Suguna, learned counsel appearing for the respondents and perused the materials placed before this Court.

9. The case of the prosecution is that the revision petitioner was a resident of Modaiyur Village and he borrowed a sum of Rs.20,000/- from the third respondent and a sum of Rs.30,000/- from the second respondent and he could not repay the said amount immediately, due to drought. He also executed a promissory note in favour of the respondents/accused. On 23.05.2015 at 07.00 p.m., all the respondents/accused came to the house of the revision petitioner, the first respondent abused the revision petitioner's wife in filthy language. The second respondent drove away the revision petitioner's



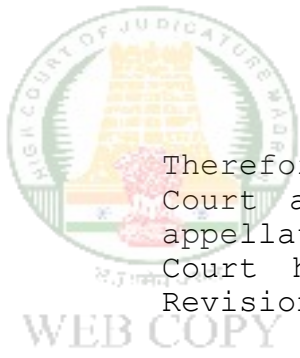
daughter/P.W.7, out of their house and locked the house. When P.W.2, the wife of the revision petitioner questioned the same, the third and fourth respondents assaulted her and the second respondent abused the revision petitioner's daughter and slapped on her cheek, struck her down. The first accused pulled the blouse of the revision petitioner's wife and threatened her with dire consequences by showing Auka blade and at that time, the revision petitioner was not in the house. When the revision petitioner reached the house, they informed the same to him and thereafter, he admitted his wife in the hospital on 2.05.2015 and lodged a complaint before the Gingee Police Station, on 25.05.2015 and a case was registered against the respondents in Crime No.234 of 2015 for the offence under Sections 294(b), 448, 323 and 506(ii) IPC and also Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act.

10. In order to substantiate the case, before the trial Court totally 11 witnesses were examined and 7 documents were marked. Out of 11 witnesses, the de-facto complainant/revision petitioner was examined as P.W.1 and his wife, who was injured witness, was examined as P.W.2 and the neighbours were examined as P.W.3 and P.W.4 and observation magazar witnesses were examined as P.W.5 and P.W.6. The daughter of the revision petitioner was examined as P.W.7 and the Doctor, who gave treatment to P.W.2 was examined as P.W.8 and the police officials were examined as P.W.9 to P.W.11. In this case, the prime witnesses are P.W.2 and P.W.7. P.W.2 has categorically stated that her husband owed money to the second and third respondents for agriculture purpose. Due to drought, he could not repay the said amount in time. Therefore, the respondents insisted the petitioner to repay the amount, for which he promised them to pay the money after mortgaging the property. Since he could not repay the money in time, the respondents came to the house of P.W.1 on 23.05.2015 at 07.00 p.m., and the second respondent pulled out P.W.7/ the daughter of P.W.2 from their house and locked the house. Further, she has also stated that when she was called by the second respondent, there was no response, therefore, the second respondent scolded her on filthy language and pulled her out and locked the house. she has stated that the respondents 1 to 3 beaten her and threatened her and also injured on her body. P.W.7 is the daughter of P.W.2, she also deposed that the respondents/accused came to the house of the revision petitioner and the first respondent scolded her mother with filthy language and at that time, all other respondents were also present. Though the neighbours are present, the second respondent entered into her house and pulled her from the house and she also sustained injuries on her neck and they beaten her mother with hands and stick all over body and her mother informed the same to her father, after reaching



their house. The second respondent also shown the Auxa blade towards her mother and threatened with dire consequences. The second respondent also beaten her with stick and also scolded them with filthy language. The Doctor, who gave treatment to P.W.2, was examined as P.W.8, has categorically stated that on 24.05.2015 at about 01.12 hours, P.W.2 was brought by P.W.1 and they stated that four known persons assaulted with the hands and stick and also slapped on her cheek, head, neck. P.W.8 found that 1x1 c.m., contusion on the left paratel region and 1x1 c.m., contusion on the left shoulder and admitted P.W.2 as in-patient and also gave wound certificate, which was marked as Ex.P.3. Though P.W.3 & P.W.4 are injured witnesses, they turned hostile. It is not suppressed that normally, it is an admitted fact that both the petitioner and the respondents are residing in the same village and same street. When there was a wordy quarrel between two families, one of the families go to the police station or the Court, the neighbours cannot support either of the families, because all are neighbours, kith and kin or relatives or known persons and well wishers. Therefore, P.W.3 and P.W.4 have turned hostile and not supported the case of the prosecution. P.W.2 has clearly stated that when the respondents came to their house, especially, the second respondent scolded her with filthy language and also beaten her and she sustained injuries and the first and third accused are also done the same. P.W.2/injured witness has clearly stated about the occurrence and the Doctor also stated that she sustained 1x1 c.m contusion on the left paratel region. 1x1 c.m contusion on the left shoulder and also on her cheek and neck. Even otherwise if there is any discrepancy between the ocular evidence and the medical evidence, the ocular evidence will prevail over. In this case, admittedly, there is previous enmity and also money transaction between the petitioner and the respondents, during the relevant point of time, there was a drought, the petitioner did not repay the money. Therefore, in the absence of the petitioner, the respondents came to the house of the petitioner and they developed quarrel with the family members and threatened them and also used filthy language. Therefore, when the injured witness has clearly stated about the occurrence, the medical evidence also corroborated the same. Both the trial Court and the appellate Court failed to appreciate the evidence and therefore, this Court finds that there is a perversity in appreciation of evidence and there is a compelled circumstances to interfere with the judgment of the both Courts below.

11.In view of the above, this Court finds there is no specific overt act attributed against the fourth respondents. The prosecution has also not proved its case beyond all reasonable doubt against the fourth respondent. However, the prosecution proved its case against the respondents 1 to 3.



Therefore, the judgment of the trial Court and the appellate Court are set aside and the matter is remitted back to the appellate Court to award the sentence, because the revisional Court has no power to award sentence. Hence, this Criminal Revision Case is allowed in part.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The II Additional Sessions Judge,
Tindivanam.
2. Do-Through,
The Principal Sessions Judge,
Villupuram.
3. The Judicial Magistrate,
Gingee.
4. Do-Through,
The Chief Judicial Magistrate,
Villupuram.
5. The Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to:

1. The Sub Inspector of Police,
Gingee Police Station (Crime No.234/15)
2. The Section Officer,
Criminal Section, High Court, Madras.

+1cc to Mr.P.Sankaranarayanan, Advocate, S.R.No.7585

Pre Delivery Order in
Crl.R.C.No.1366 of 2019

PL(CO)
SU(17/02/2022)