



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 23.12.2022
PRONOUNCED ON : 23.02.2022
CORAM
THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

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Crl.O.P. (MD)No.4624 of 2019
and
Crl.M.P. (MD)No.2833 of 2019

Rev.Fr.Xavier Vedham : Petitioner/4th Accused

Vs.

1.The State of Tamil Nadu,
represented by its Inspector of Police,
All Women Police Station,
4th Circle, Fort Police Station,
Trichirappalli. : 1st Respondent/Complainant

2.Sr.Florence Mary : 2nd Respondent/Defacto complainant

PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for records in S.C.No.101 of 2011, on the file of the Sessions Judge (Mahila Court), Trichirappalli and quash the same.

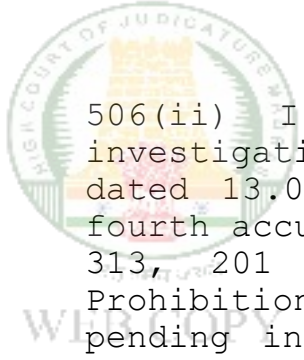
For Petitioner : Mr.Issac Mohanlal
Senior Counsel
for M/s Issac Chambers

For Respondents : Mr.R.Sivakumar
Government Advocate(Crl.Side)
for R.1
: Mr.A.John Vincent for R.2

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records in S.C.No.101 of 2011, pending on the file of the Sessions Judge (Mahila Court), Trichirappalli.and quash the same so far as the petitioner/fourth accused is concerned.

2. The petitioner is the fourth accused in S.C.No.101 of 2011, on the file of the Mahila Court, Trichirappalli. On the basis of the complaint lodged by the second respondent, F.I.R. came to be registered in Cr.No.62 of 2010, against four persons including the petitioner herein for the alleged offences under Sections 376 and

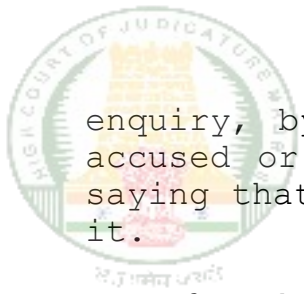


506(ii) I.P.C. The first respondent, after completing the investigation, has filed the final report under Section 173 Cr.P.C., dated 13.01.2011 against five persons arraying the petitioner as fourth accused, for the alleged offences under Sections 376, 506(i), 313, 201 r/w 34 I.P.C., and under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act 2002 and the case is now pending in S.C.No.101 of 2011, on the file of the Mahila Court, Trichirappalli.

3. The case of the prosecution is that the defacto complainant was an ordained Nun in St.Anne's Convent Society and she worked as a Teacher in several schools, that while she was working at Palayamkottai, she got introduced to the first accused Fr.Rajarathinam, that on 22.02.2006 at about 02.00p.m., the first accused invited the defacto complainant to the guest house behind his residence inside the St.Joseph's College Campus, Trichirappalli and made her to drink lemon juice mixed with some sedative substance and raped her without her consent while she was unconscious, that the first accused took nude photographs in his cell phone and by showing those photographs, the first accused had blackmailed her and had sexual intercourse with her several times, that the first accused had also threatened her showing the nude photographs that he would ruin her and her family, if she tells the incident to anyone, that in April 2008, the defacto complainant informed the first accused that she was pregnant and that the first accused threatened her that he would not hesitate even to kill her, if she does not undergo abortion and thereby obtained the permission of the defacto complainant and took her along with him and dropped her in front of KMC Hospital, Trichirappalli and abetted the defacto complainant to miscarry.

4. The prosecution case as against the petitioner/fourth accused is that since the defacto complainant did not yield to the request of the first accused for sexual intercourse several times, the first accused caused expulsion of the defacto complainant from the congregation by using his influence and in continuation of the same, on 29.09.2010, the defacto complainant met the accused 2 to 4 along with the witnesses at Ideas Centre, Madurai, in order to participate in the enquiry with respect to the rape complaint given by her against the first accused and that in furtherance of common intention, the petitioner and the accused 2 and 3 did not conduct enquiry and thereby screened the offence committed by the first accused.

5. The prosecution's further case is that the petitioner and the accused 2 and 3 had also threatened the defacto complainant and the witnesses, that the accused 2 to 4 would ruin the defacto complainant and her family, if they either make any complaint or tell the incident to anyone or goes to media and thereby criminally intimidated them by wielding death threat and that the petitioner had also invited and harassed the defacto complainant, who came for



enquiry, by asking her "whether she had slept only with the first accused or had she slept with some other priests as well?" and by saying that such are all petty incidents and not to make an issue of it.

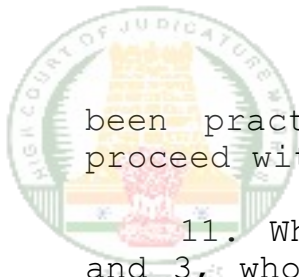
6. The learned trial Judge, after hearing both sides, has framed the charges on 20.03.2012 and whereunder the charges under Sections 201 r/w 34 and 506(i) I.P.C., and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act 2002, were framed against the present petitioner.

7. It is not in dispute that when the case was pending for trial, the main accused/first accused had died on 24.05.2021. It is also not in dispute that the accused 2 and 3 have filed similar petitions in Crl.O.P.(MD)No.21512 of 2019 and Crl.O.P.(MD)No.4623 of 2019 under Section 482 Cr.P.C., for quashing the final report in S.C.No.101 of 2011 and this Court, vide order dated 22.03.2019 and 05.04.2019 respectively, quashed the charges framed against the said accused.

8. It is further evident that the fifth accused, who is a Doctor at KMC hospital and who had allegedly given medicines for aborting the conception, she has filed a petition in Crl.O.P.(MD) No.12996 of 2012 and this Court has passed an order dated 17.09.2018, dismissing the said petition and directed the trial Court to conclude the entire proceedings within a period of six months from the date of receipt of a copy of that order. The remaining accused, the petitioner herein has filed the above petition for quashing the case in S.C.No.101 of 2011 as against him. As already pointed out, the charges were framed against the petitioner for the offences under Sections 201 r/w 34, 506(i) I.P.C., and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act 2002.

9. In the meanwhile, the second respondent/defacto complainant has filed a counter affidavit in Crl.O.P.(MD)No.21512 of 2018 and though it was titled as counter affidavit, she has filed an affidavit in support of the accused and against the prosecution and wherein she had taken U turn and has claimed that the complaint lodged by her was false. According to the defacto complainant, she is now practicing as an Advocate, that she got married and got a ten months old baby at the time of filing of the said affidavit and that since she had realised the consequences of her fault, she don't want to proceed with the Sessions Case in S.C.No.101 of 2011, on the file of the Mahila Court, Trichirappalli and that therefore, she wanted to withdraw the complaint.

10. No doubt, since the defacto complainant herself admitted that she has given a false complaint, she has to be prosecuted, but considering her contentions that she got married and got a ten months old baby and she is leading a peaceful life and that she has



been practicing as an Advocate, this Court is not inclined to proceed with that action.

11. While considering the quash applications of the accused 2 and 3, who were also charged with the offences under Sections 201 r/w 34, 506(i) I.P.C, the learned Judge of this Court has observed as follows:

"7. The second respondent has also filed what is styled as a counter affidavit. On a reading of the same, it gives the wholesome concession to all the accused, including the first accused, who she had earlier alleged as having raped her, or supported the acts of rape, as the case may be.

8. A reading of the entire statement of the witnesses including that of the prosecutrix, one fact that stands out is that nowhere there is an allegation that the petitioner had either harboured any criminal, or had participated in any of the acts constituting rape at any point of time, nor had he suppressed any information deliberately to the Investigating Agency. Possibly if the Investigating Agency has treated him as a witness he might have parted with any information. But, when the Investigating Agency has treated him as an accused, necessarily the petitioner is Constitutionally protected not to make any self incriminating statement to the Investigating Agency. Therefore, this Court considers no offence under Section 201 IPC has made out.

9. Turning to the second part, namely, offence under Section 506(i) IPC, while it may appear artificial in the context of the case, yet inasmuch as charges are framed, in normal circumstances, the petitioner will be required to undergo trial for the offence. Here, this Court chooses to rely on the counter affidavit filed by the second respondent.

10. In this affidavit, the second respondent makes a statement that her complaint itself is false, and was wrongly made, and that she would be withdrawing the complaint. Where the offence of which the first accused is accused of, is not only a cognizable offence, but also a crime of heinous variety, it would not be appropriate to accept the statement of the prosecutrix entirely. Suffice to say for the present, if only it were a false case, the prosecutrix is only making mockery of the legal process and judicial system of the country.



11. Legal system of the country is not a play thing for her to settle the personal score if only the Court were pressed her present statement made in her counter affidavit.

12. Having stated thus, so far as the charge under Section 506(i) IPC against the petitioner is concerned, the Court chooses to rely on the affidavit of the second respondent for the limited purpose of treating the said offence merely in nature of private offence. Therefore, when the prosecutrix makes statement that she does not want to proceed with the case, it is only considered for the limited purpose that she is not going to proceed with the case for the offence under Section 506(i) IPC. (As indicated earlier, this Court does not want to stretch it for the offence of 376, for which the first accused now faces trial.) Necessarily, charges for offence under Section 506(i) IPC framed against the petitioner should also now go.

By holding so, the learned Judge has quashed the charges framed against the accused 2 and 3.

12. Apart from the offences under Sections 201 r/w 34 and 506 (i) I.P.C., the petitioner is also charged with the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act 2002.

13. The learned Senior Counsel appearing for the petitioner would submit that in order to attract the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act 2002, the offence must have been taken place at a place covered by that section, in or within the precincts of any educational institution, temple or other places of worship, bus stop, road, railway station, cinema theatre, park, beach, place of festival, public service vehicle or vessel or any other place. The learned Senior Counsel would further submit that the prosecution has not mentioned the specific place where the alleged offence was committed and though in continuance of the earlier charges, if it is taken that the present offence was also committed at Ideas Centre, Madurai, the said place cannot be considered as a place covered under the Section. The learned Senior Counsel would further submit that 'any other place' found in Section 4 are to be read 'ejusdem generis' and he relied on the judgment of this Court made in **Crl.R.C.No.1301 of 2016, dated 07.11.2016 (Vijayakumar Vs. State by the Sub-Inspector of Police, All Women Police Station, Attur)**, wherein this Court held as follows:



"6. Learned counsel for petitioner submits that as against Ex.P.1- complaint informing that the petitioner/accused on 15.07.2014 at about 4 p.m challenged the defacto complainant/P.W.1 raising the question if the victim was a girl of great beauty and informing that he would abduct her, the petitioner has been charged of having teased the victim girl questioning her beauty.

7. It is not in dispute that both petitioner/accused and P.W.1 and the victim girl/P.W.2 are immediate relatives. The prosecution case is of the occurrence having taken place in an open field. Following the dictum of this Court in CDJ 2012 MHC 2168, ANBAZHAGAN Vs. STATE REP. BY INSPECTOR OF POLICE, PALLIKARANAI POLICE STATION, KANCHEEPURAM DISTRICT, where it has been held as follows:-

"To attract the offence under Section 4 of Tamil Nadu Prohibition of Harassment Women Act, 1998 offence must have taken place at a place particularly covered by the Section. A private dwelling house is not one of such places Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998 reads as follows:

"4. penalty for (harassment or women) whoever commits or participates in or abets (harassment of women) in or within the precincts of any educational institution, temple or other place of worship, bus stop, road, railway station, cinema thereto, park, beach, place of festival, public service vehicle or vessel or any other place shall be punished with imprisonment for a term which may extend to three years and with fine which shall not be less than thousand rupees."

This Court by its order dated 25.10.2010 in Crl.O.P.No.13501 of 2010 in Gouresh Mehra v. The State Rep. By Tr has held as follows:

"This Court is of the considered opinion that the words 'any other place' found in Section 4 are to be read 'ejusdem generis'. The Tamil Nadu Prohibition of Harassment of Women Act, 1998 when originally enacted consisted of 10 Sections and came into force on 30.07.1998. The offences under Section 4-A Harassment death, 4-B been included under subsequent amendments of the year 2002. Confining ourselves to the offence contemplated under Section 4 and looking into the objects and reasons of the enactment not towards informing ourselves of the amplitude of the Act but towards understanding the idea behind it, we find that the enactment was intended as a measure to eradicate eve teasing in public places. The Act while prescribing a penalty for harassment under Section 4 restricts the same to harassment committed at particular places. Proceeding further, we find, that under Section 5 and 6,



responsibilities are cast upon persons in charge of educational institutions, temple or other places of worship, cinema theatre or any other precinct and upon the crew of public service vehicle or vessel. This Court considers it reasonable to hold that Section 4 of the Act was meant to deal with offences occurring in the places informed or in places of like nature. If not so read, the mention of the particular places in Section 4 would be rendered redundant and such could not have been the legislative intent. To put it differently, if the intent was to attract punishment for harassment at any and every places, Section 4 simply could have read as follows:

"4. Penalty for harassment of women-whoever commits or participates in or abets harassment of women in any place shall be punished....."

7. In *Kochuni v. State of Madras and Kerala*, AIR 1960 SC 1080, it has been explained that the rule of 'ejusdem generis' was that when general words follow particular and specific words of the same nature, the general words must be confined to the things of the same kind as those specified. It was further observed that it is clearly laid down by decided cases that the specific words must be form a distinct genus or category. It is not an inviolable rule or law, but it is only permissible inference in the absence of an indication to the contrary. In *Lila Vati Bai v. State of Bombay*, AIR 1957 SC 521, it is informed that the rule of 'ejusdem generis' is intended to be applied where general words have been used following particular and specific words of the same nature on the established rule of construction that the legislature presumed to use the general words in a restricted sense; that is to say, as belonging to the same genus as the particular and specific words. Such a restricted meaning has to be given to words of general import only where the context of the whole scheme of legislation requires it. But where the context and the object and mischief of the enactment do not require such restricted meaning to be attached to words of general import, it becomes necessary to give a plain and ordinary meaning."

For the above said reasons, the Criminal Revision Petition is allowed."

14. The learned Senior Counsel for the petitioner has also relied upon a judgment of this Court in *G. Logewaran Vs. State* represented by the Inspector of Police, All Women Police Station, Vellore and another, passed in CrI.O.P.No.7405 of 2017, dated 06.12.2018, wherein this Court has held as follows:



"11. Eventhough Section 3 of the Tamil Nadu Prohibition of Harassment of Women Act states that harassmt of Women at any place is prohibited, while providing the penalty for harassmt of women, it is specifically restricted to particular places where the harassmt has to take place. If Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act is to be read in the manner indicated by the learned counsel for the 2nd respondent, there was no need for defining the place, in the said provision and the provision itself would have said "Any Place". The whole purport of the Act is that the harassmt should not happen in a public place. This Court is therefore in complete agreement with the submissions made by the learned Senior counsel in this regard."

15. The above decisions are squarely applicable to the case on hand. Moreover, as rightly observed by the learned Judge, in the order passed in Crl.O.P.(MD)No.4623 of 2019, that though it would not be appropriate to accept the statement of the prosecutrix entirely, but her affidavit can be relied for the limited purpose of treating the said offence merely in nature of private offence and that when the prosecutrix makes statement that she does not want to proceed with the case, it is only considered for the limited purpose, that she is not going to proceed with the case for the offence under Section 506(i) I.P.C.

16. Considering the above, this Court has no hesitation to hold that the charges framed against the present petitioner for the offences under Sections 201, 506(i) r/w 34 I.P.C., and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act 2002 are liable to be quashed.

17. In the result, the Criminal Original Petition is allowed and the proceeding in S.C.No.101 of 2011, pending on the file of the Sessions Judge (Mahila Court), Trichirappalli as against the petitioner is quashed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-

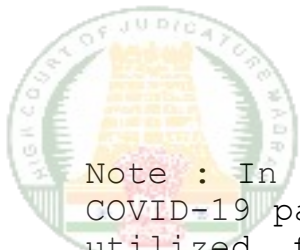
Assistant Registrar(CS-III)

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Sessions Court, (Mahila Court), Trichirappalli

2.The Inspector of Police,
All Women Police Station,
4th Circle, Fort Police Station,
Trichirappalli.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.ISAAC CHAMBERS, Advocate (SR-8425[F] dated
24/02/2022)

ORDER MADE IN
Crl.O.P. (MD)No.4624 of 2019
23.02.2022

sk(CO)
TR(07.03.2022) 9P 5C