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CrI.R.C.(MD)No.51 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date : 26.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CrI.R.C.(MD)No.51 of 2019

1.Velmurugan
2.Subbulaxmi
3.Baskaran

... Petitioners

-Vs-

State through its Sub Inspector of Police,
Pudukottai Police Station,
Tuticorin District.

... Respondent

PRAYER : This Criminal Revision Petition has been filed under Section 397 r/w 401 of Cr.P.C., to set aside the judgment passed in C.A.No.134 of 2017 dated 21.12.2018 by the learned II Additional Sessions Judge, Tuticorin, confirming the judgment and sentence order passed in C.C.No. 1367 of 2017 dated 11.10.2017 on the file of the Judicial Magistrate-III, Tuticorin and acquit the petitioners in the above cases.

For Petitioners : Mr.K.A.Raamakrishnan

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate(CrI.Side)



ORDER

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This revision has been filed to set aside the judgment passed in C.A.No.134 of 2017 dated 21.12.2018 by the learned II Additional Sessions Judge, Tuticorin, confirming the judgment and sentence order passed in C.C.No.1367 of 2017 dated 11.10.2017 on the file of the Judicial Magistrate-III, Tuticorin and acquit the petitioners in the above cases.

2. The case of the prosecution is that on 16.02.2015, at about 01.00 p.m, when the defacto complainant and her husband while sleeping in their house, the first accused knocked the back door of their house. Thereafter, the defacto complainant came to the back door of the house and the same was locked. She immediately came to the infront of the house and she had seen that the first accused jumped over the compound wall, immediately she informed the same with her husband. On the next day, the defacto complainant's husband went to the first accused house, at that time, the second and third accused scolded him in filthy language. Thereafter, the case was registered in Crime No.50 of 2015 for the offences punishable under Sections 448, 294(b), 506(i) of IPC and Section 4 of TNPWH Act.



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3. After completion of investigation, the final report was also filed before the concerned Court and the same was taken cognizance. In order to prove the charges, on the side of the prosecution, 7 witnesses were examined as P.W.1 to P.W.7 and four documents were marked as Ex.P.1 to Ex.P4. On the side of the petitioner, no one was examined and no documents were marked.

4. On perusal of oral and documentary evidence, the trial Court found the petitioner guilty for the offence punishable under Sections 448 and 294(b) of IPC, to pay a fine of Rs.1,000/- in default to undergo one month simple imprisonment and the petitioners 2 and 3 are convicted under Section 294(b) IPC with fine of Rs.500/- each in default of payment of fine, the petitioners to undergo a rigorous imprisonment for a period of one month. Aggrieved over the same, the petitioners preferred an appeal and the same was also dismissed by confirming the conviction and sentence imposed by the trial Court. Hence, the present revision.

5. On 16.02.2015 at about 01.00 p.m, when the defacto complainant/P.W.1 and her husband/P.W.2 while sleeping in their house, the first accused knocked the back door of their house. Thereafter, the defecto complainant came to the back door of the house and the same



was locked. She immediately came to the infront of the house and she had seen that the first accused jumped over the compound wall, she informed the same with her husband. On the next day, the defacto complainant's husband went to the first accused house, at that time, the second and third accused scolded them in filthy language.

6. According to the prosecution, P.W.1 had seen that the first petitioner was jumping in the compound wall. Therefore, he did not trespassed to her house. Hence, the charges under Section 448 is not made out against the first petitioner. Unfortunately, the charges under Section 294(b) and 506(i) of IPC are concerned, according to the prosecution P.W.1 and P.W.2 are went to the first petitioner's house and questioning the about the act of the first petitioner. Thereafter only, the other petitioners abused the defacto complainant and her husband in filthy language and also threatened him with their consequence. Hence, the alleged occurrence was occurred in the place of the first petitioner house and not in the place of the public place. When the occurrence had taken place in the public, the prosecution ought to have examined any one of the independent witness for proving the charges under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and 294(b) of IPC. In this regard, it is relevant to extract the provision under Section 294(b) of IPC, which reads as under:



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"294. Obscene acts and songs – Whoever, to the annoyance of others-

(a) does any obscene act in any public place or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."

Admittedly, Section 294(b) of IPC is not attracted as against the petitioner.

7. It is also relevant to rely upon the judgment of this Court reported in **1996(1) CTC 470** in the case of **K.Jeyaramanuju Vs. Janakaraj & anr.**, which held as follows:-

"To prove the offence under Section 294, I.P.C. mere utterance of obscene words are not sufficient, but there must be a further proof to establish that it was to the annoyance of others, which is lacking in this case".

8. Therefore, the prosecution has failed to prove the charge under Section 294(b) of IPC. Hence, the charges under Section 294(b) and 506(i) of IPC are not made out against these petitioners.



9. The prosecution miserably failed to prove the charges as against the petitioners and the entire conviction and sentence cannot be sustained as against the petitioners and liable to be set aside. Accordingly, the conviction and sentence imposed by the both Courts below is set aside and the petitioners are acquitted from all the charges. If any fine amount already paid by the petitioners, the same shall be returned.

10. In the result, this criminal revision case is allowed.

26.06.2023

NCC : Yes/No
Index: Yes/No
Internet: Yes/No
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To

1. II Additional Sessions Court,
Tuticorin.

2. The Judicial Magistrate-III, Tuticorin.

3. The Sub Inspector of Police,
Pudukottai Police Station,
Tuticorin District.

4. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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