



Crl.R.C(MD)No.62 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 24.03.2023

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.62 of 2018

Micheal Amirthapani

...Petitioner

Vs.

State through
The Sub Inspector of Police,
Mukkudal Police Station,
Tirunelveli District.
(Crime No.154/2011)

...Respondent

Prayer : This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, to set-aside the judgment dated 12.10.2017 made in Crl.A.No.5 of 2017 on the file of the IV Additional Sessions Judge, Tirunelveli, modifying the judgment made in C.C.No. 199 of 2011 on the file of the Judicial Magistrate, Cheranmahadevi, dated 11.01.2017.

For Petitioner : Mr.S.Krishnan

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Crl.side)



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ORDER

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The Petition has been filed to set-aside the judgment dated 12.10.2017 made in Crl.A.No.5 of 2017 on the file of the IV Additional Sessions Judge, Tirunelveli.

2.The case of the prosecution is that on 10.07.2011 at about 1.00 am, the petitioner had entered into the house of the victim, pulled her hand, misbehaved with her, tore her nighty and committed an act of harassment of woman. On receipt the complaint, the respondent registered an FIR in crime No.154 of 2011 for the offence punishable under Sections 448, 354 of IPC r/w Section 4 of Tamilnadu Prohibition of Harassment of Women Act, 1998. After completion of investigation, final report was filed and the same has been taken cognizance by the trial Court. In order to prove the charge, the prosecution had examined PW1 to PW8 and marked Ex.P1 to Ex.P4. On the side of the accused, no one was examined and no material was produced in order to disprove the case of the prosecution. On perusal of oral and documentary evidence, the trial Court found him guilty for the offence under Section 448 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998 and sentenced him to undergo rigorous imprisonment for a period



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of one year and for the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 1998, the petitioner was sentenced to undergo rigorous imprisonment for a period of two years and to pay a fine of Rs.10,000/-, in default, to undergo rigorous imprisonment for a period of two months. Aggrieved by the same, the petitioner preferred an appeal and the same was partly allowed and set-aside the conviction insofar as Section 4 of TNPHW Act. Insofar as the conviction for the offence under Section 448 of IPC, the same was confirmed. Hence, the present revision.

3. The learned counsel for the petitioner would submit that the arrest of the petitioner itself is in doubt. According to the case of the prosecution, the petitioner was handed over to the respondent herein. Therefore, there was no arrest of the petitioner herein. When the Courts below found guilty for the offence under Section 4 of TNPHW Act, there is absolute no evidence to show that the petitioner trespassed into the house of the defacto complainant. The over all circumstances of the prosecution case is highly doubtful and there was no reason to implicated the petitioner as an accused.



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4. The learned Government Advocate (Crl.side) submitted that

in order to prove the charge, the prosecution had examined PW1 to PW8 and marked Ex.P1 to Ex.P4. Though the trial Court convicted the appellant for the offence under Section 448 of IPC and Section 4 of TNPHW Act, the Appellate Court acquitted the petitioner for the offence under Section 4 of TNPHW Act, and convicted only for the offence under Section 448 of IPC. On perusal of evidence of PW1 revealed that when she was sleeping in the house one person entered her house and immediately she shouted. On hearing the sound, all caughthold the petitioner and handed over to the respondent herein. Further she deposed that the respondent did not take appropriate action as against the accused and as such she went to Palayamkottai police station and lodged a complaint. Whereas on perusal of evidence of PW2, it is revealed that when she awoke from the asleep, she found PW1 was crying and the accused ran out from the house. She also saw the accused and immediately all of them caught-hold them and handed over to the respondent. Therefore, there was no evidence to show that the petitioner misbehaved with PW1 and he tore her nighty. Hence, the Appellate Court rightly acquitted the petitioner for the offence under Section 4 of TNPHW Act.



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5. Insofar as the Section 448 of IPC is concerned, admittedly the accused entered into PW1's house during midnight. Therefore, both the Courts below rightly convicted him for the offence under Section 448 of IPC. It is also seen that the petitioner belongs to same village and he also residing in the same area. Therefore, PW1 knew him very well. The prosecution also failed to prove that on what purpose, he trespassed into the house of PW1. Further the learned counsel for the petitioner would submit that an legal aid counsel was appointed for putforthing the case of the petitioner before the trial Court. Therefore, the learned counsel failed to cross examine PW1 to the effect that there was already previous enmity between them. Hence, PW1 is also running a petty shop and shift to the petitioner herein. In order to shift the petty shop, there was a quarrel between them. Therefore, a false case was foisted against the petitioner, as if he trespassed into the house of PW1. Therefore, nothing is found from the deposition of PW1 that the prosecution proved the case beyond any doubt insofar as trespassing of the accused into the house of the victim. Hence, no infirmity or illegality is found for the conviction imposed by the trial Court for the offence punishable under Section 448 of IPC. Insofar as the sentence is concerned, this Court is



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inclined to reduce the period, which was already undergone by the petitioner herein.

6. Accordingly, this Criminal Revision Case is partly allowed.

24.03.2023

NCC : Yes/No
Index : Yes / No

vsd

To

- 1.The IV Additional Sessions Judge,
Tirunelveli.
- 2.The Judicial Magistrate,
Cheranmahadevi.
- 3.The Sub Inspector of Police,
Mukkudal Police Station,
Tirunelveli District.



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