



Crl.R.C(MD)No.775 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.03.2023

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.R.C(MD)No.775 of 2016

Sudalai Eswaran

...Petitioner

Vs.

**The State represented by
The Inspector of Police,
Tirunelveli Town Police Station,
Tirunelveli.
(Crime No.500 of 2013)**

...Respondent

Prayer : This Criminal Revision has been filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the entire records pertaining to the judgment delivered by the Judicial Magistrate No.V, Tirunelveli in C.C.No.42 of 2015 vide his judgment dated 31.07.2015, which has been subsequently modified by the Additional Sessions Judge/III Additional Sessions Court, Tirunelveli in C.A.No.90 of 2015 vide his judgment, dated 05.10.2016.

For Petitioner : Mr.P.Samuel Gunasingh

**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 passed by the learned Additional Sessions Judge/III Additional Sessions Court, Tirunelveli in C.A.No.90 of 2015, dated 05.10.2016, modifying the judgment passed by the learned Judicial Magistrate No.V, Tirunelveli in C.C.No.42 of 2015 vide judgment dated 31.07.2015.

2.The case of the prosecution is that while on 24.05.2013 at about 5.00 p.m., the victim was going for purchasing goods, due to previous enmity, the accused scolded her in filthy language and also pulled her hand and threatened her with dire consequence for not speaking to him through cell phone. On the complaint lodged by the victim, the respondent registered the First Information Report in Crime No.500 of 2013 for the offences under Sections 294(b) and 506(i) of IPC and Section 4 of Tamil Nadu Prevention of Harassment of Women Act. On completion of investigation, the respondent police filed a final report and the same has been taken cognizance by the trial Court. Before the trial Court, prosecution had examined PW1 to PW6 and marked five documents as Ex.P1 to Ex.P5. On the side of the accused, he examined DW1 and DW2 and marked two documents as Ex.D1 and Ex.D2. On



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perusal of oral and documentary evidence, the trial Court found that the petitioner's guilty for the offences under Sections 294(b) of IPC and Section 4 of Women Harassment Act and insofar as the offence, under Section 506(ii) of IPC is concerned, he was acquitted. The petitioner was sentenced to undergo three years rigorous imprisonment for the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, and also imposed a fine of Rs.10,000/-, and three months simple imprisonment for the offence under Section 294(b) of IPC, in default, to undergo six months simple imprisonment. Aggrieved by the same, the petitioner preferred an appeal and the Appellate Court confirmed the conviction and reduced the sentence to six months simple imprisonment for the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. Aggrieved by the same, the present civil revision petition has been filed.

3. The learned counsel for the petitioner submitted that the alleged occurrence was taken place on 24.05.2013 at about 5.00 p.m. whereas the complaint lodged only on 25.05.2013. PW2 categorically deposed that she had never seen the occurrence and she was standing far away from the place of the alleged occurrence. Therefore, the deposition



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of victim was not corroborated by any of the witnesses. In fact, the victim and the petitioner had relationship and it came to the knowledge of the husband of the victim and as such, a false complaint has been foisted against the petitioner. It was also categorically admitted by the victim that they had relationship and the same was proved by producing the photographs, which are marked as Ex.D1 and Ex.D2.

4.The learned Government Advocate (Crl.side) submitted that the prosecution had proved their case beyond any doubt and as such both the Courts below rightly convicted the petitioner for the offences under Sections 294(b) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. Therefore, the order passed by the courts below does not require any interference, since both the Courts below concurrently convicted the petitioner for the offences under Section 294(b) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.side) appearing for the respondent.



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6. The case of the prosecution is that on 24.05.2013 at about 5.00 p.m., while the victim was going for purchasing goods near by Thondar Sannathi, the petitioner pulled her hand and threatened her with dire consequences as if she failed to speak to him through cell phone. The victim was examined as PW1. She deposed that the occurrence took place in the public place and it was seen by many people. The occurrence had taken place between the fruit shop and Uchi Mahali Temple. She also deposed that PW2 her mother-in-law is also one of the witness. All the witnesses cited by the prosecution are close relatives of the victim. However, the prosecution failed to examine any independent witnesses to corroborate the evidence available on record. On perusal of the evidence of PW2, who is none other than mother-in-law of the victim, it is seen that she was standing far away from the place of the alleged occurrence. She did not know about the occurrence and she has not seen the occurrence. The complaint itself lodged only at the instance of PW1's husband. Whereas the case of the petitioner is that he had relationship with PW1. When it came to the knowledge of her family members, they insisted to lodge a false complaint against the petitioner as such, the occurrence took place on 24.05.2013, but the complaint itself was alleged on 25.05.2013, for which, there is absolutely no



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explanation about the prosecution. 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:

"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



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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. Insofar as the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act is concerned, except PW1, no other independent witness was examined by the prosecution in order to corroborate the evidence of PW1. Admittedly, petitioner and the victim had relationship. Only at the instance of the victim's husband, the complaint was lodged. It was also not explained by the prosecution that the complaint was lodged only on 25.05.2013 for occurrence which took place on 24.05.2013. PW2 also categorically deposed that only at the instance of husband of PW1, the complaint was lodged and she was also standing far away from the place of the alleged occurrence. Therefore, she also failed to support the case of the prosecution in order to prove the charges under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. In this regard, it is relevant to extract Sections 2(a) and 4 of Tamil Nadu Prohibition of Harassment of Women Act, which reads as under:



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"Section 2: Definitions: In this Act, unless the context otherwise requires:-

(a) "harassment" means any indecent conduct or act by a man which causes or is likely to cause intimidation, fear, shame or embarrassment, including abusing or causing hurt or nuisance or assault or use of force."

"4. Penalty for harassment of woman. - Whoever commits or participates in or abets harassment of woman in or within the precincts of any educational institution, temple or other place of worship, bus stop, road, railway station, cinema theater, 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 ten thousand rupees".

9. It is seen that the petitioner had relationship with PW1. The complaint itself was lodged only at the instance of her husband. That apart, no harassment was made by the petitioner in order to cause intimidation, fear, shame or embarrassment, including abusing or causing hurt or nuisance or assault or use of force any. Therefore, no ingredients are available in order to attract the offence under Section



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4 of Tamil Nadu Prohibition of Harassment of Women Act. Therefore, the prosecution had miserably failed to prove that the petitioner is guilty for the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act.

10. In view of the above discussions, the conviction and sentence imposed by the Courts below are hereby set aside for the offence under Sections 294(b) and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act.

11. Accordingly, this Criminal Revision Case stands allowed.

06.03.2023

NCC : Yes/No
Index : Yes / No
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G.K.ILANTHIRAIYAN, J.

vsd

To

- 1.The Judicial Magistrate No.V,
Tirunelveli.
- 2.The Additional Sessions Judge/
III Additional Sessions Court,
Tirunelveli.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 4.The Inspector of Police,
Tirunelveli Town Police Station,
Tirunelveli.

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