



CrI.R.C.No.432 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.R.C.No.432 of 2021

M.Vijayakumar

... Petitioner

Vs.

State represented by
The Sub-Inspector of Police,
B-4 Race Course Police Station,
Coimbatore.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 & 401 of Code of Criminal Procedure to set aside the judgment dated 30.03.2021 passed in C.A.No.407 of 2018 by the learned IV Additional Principal and Sessions Judge, Coimbatore confirming the judgment dated 03.09.2018 passed in C.C.No.444 of 2015 by the Judicial Magistrate No.III, Coimbatore.



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For Petitioner : Mr.C.D.Sugumar
For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

The petitioner/accused in C.C.No.444 of 2015 convicted by the learned Judicial Magistrate No.III, Coimbatore by judgment dated 03.09.2018 for the offence under Section 4 of Tamil Nadu Prohibition of Women Harassment Act and sentenced to undergo three years rigorous imprisonment and to pay a fine of Rs.10,000/-, in default, to undergo six months simple imprisonment. Aggrieved against the same, the petitioner preferred an appeal in C.A.No.407 of 2018 before the learned IV Additional District and Sessions Judge, Coimbatore. The learned Sessions Judge by judgment dated 30.03.2021 dismissed the appeal by confirming the order of the Trial Court. Against which, the present revision petition is filed.

2.The gist of the case is that on 12.08.2015 at about 7.30 a.m., P.W.1 was waiting in Gandhipuram Town Bus Stand, Coimbatore to board a bus to College, at that time, the petitioner/accused, a distant relative, came there, abused her for refusal to marry him. The petitioner/accused further abused



her father and threatened both, he abused her by calling her for a day.

P.W.1/defacto complainant called emergency number 100 and also called her father, who informed his friends Vellyyangiri and Ramesh, thereafter he came there. In the meanwhile, the Police came to the scene of occurrence and took the petitioner/accused along with them. By noon, P.W.2 and P.W.3, parents of P.W.1 came there, went to the Police Station, lodged a complaint/Ex.P1. P.W.6 received the complaint, visited the scene of occurrence, prepared observation mahazar, rough sketch, enquired the persons present in the scene of occurrence, recorded their statement and prepared mahazars in the presence of P.W.5. In the meanwhile, P.W.6 received information about the accused, P.W.6 proceeded to Gandhipuram where the petitioner/accused was found standing near A.S.Fast Food, on identification by P.W.2, the petitioner/accused was arrested at about 4.45 p.m., brought to the Police Station and thereafter, produced for remand. On completion of investigation, charge sheet filed. During trial, P.W.1 to P.W.6 examined and Ex.P1 to Ex.P4 marked on the side of prosecution and on the side of the defence, no witness examined and no documents marked. On conclusion of trial, the Trial Court convicted the petitioner as stated above and the Lower Appellate Court dismissed the appeal confirming the



conviction of the Trial Court. Against which, the present revision petition is filed.

3.The contention of the learned counsel for the petitioner is that the petitioner is a relative to P.W.2 which is not in dispute. There is a dispute between the petitioner and P.W.2 and hence, he is falsely implicated in the above case. The petitioner's presence in the bus stand is highly doubtful. P.W.5 is the only witness who states that he saw the petitioner picking up quarrel with a lady at about 7.30 a.m. P.W.5, a pushcart vendor selling Panipuri, admits, normally he sells Panipuri in the evening hours and in the day time, he prepares the same in his residence and his presence inside the bus stand is also doubtful, since no pushcart vendors are permitted inside the bus stand, further he is at the mercy of the Police to do his business and he is in the nature of stock witness. He identifies the petitioner for the first time in the Court after three years. In this case, no test identification parade conducted, the evidence of P.W.5 is highly doubtful. He would submit that the evidence of P.W.1 is that somebody in the Police Station written the complaint/Ex.P1. On the contrary, P.W.2/father of the victim states that he is not aware as to who wrote the complaint, the evidence of P.W.3/mother is



that P.W.1 had written the complaint. Hence, Ex.P1 becomes doubtful.

Further, the evidence of P.W.1 to P.W.4 is that the petitioner was available in the Police Station even by 10.30 a.m. but the evidence of P.W.6/Investigating Officer is that the petitioner was arrested about 4.45 p.m. near A.S.Fast Food at Gandhipuram. Hence, the arrest of the petitioner becomes highly doubtful.

4.The learned counsel further submitted that the evidence of P.W.1 is that she called the emergency number 100, who came there and took the petitioner/accused along with them. P.W.6 admits that he had not verified with the Control room with regard to receipt of any phone call. Further, P.W.6 admits that no emergency call was received from the Control room on that day. P.W.1, P.W.2 and P.W.4 admit using the mobile phone and calling each other but the Police, not conducted any investigation to collect call details to prove that at the relevant point of time, P.W.1, P.W.2 and P.W.4 were calling each other and reporting about the incident. The Trial Court relied upon the evidence of P.W.1 and P.W.5 in convicting the petitioner is not proper. The petitioner sought for certain documents under Right to Information Act from the Control room to prove that on 12.08.2015 at about



7.30 a.m., no emergency call was received in the Control room as claimed by P.W.1. The Trial Court not considered this explanation along with the RTI message not considered for the simple reason, report filed along with statement of accused, during 313 Cr.P.C. questioning, the statement alone can be considered and not the documents. This reason for not considering the report is not proper. The Trial Court as well as the Lower Appellate Court convicted the petitioner merely on presumption and assumption and not on evidence. Hence, prayed for setting aside the conviction and sentence.

5.The learned Additional Public Prosecutor filed his counter and submitted that in this case, P.W.1, a college student standing in the bus stand to board a bus at about 7.30 a.m. on 12.08.2015, at that time, the petitioner, a distant relative of P.W.1, was following and forcing P.W.1 to marry him, abused her and threatened her since P.W.1 refused for the marriage. Further, the petitioner is continuing this act from the year 2013. The petitioner further threatened her parents and called P.W.1 for a day, P.W.5, a pushcart vendor, who was present near the scene of occurrence witnessed the petitioner petitioner quarrelling with P.W.1. P.W.1 immediately called



emergency Police number 100, who came there, took the petitioner along with them. In the meanwhile, P.W.1 called her father, P.W.2, who informed P.W.5 and Ramesh, another friend, who came there, enquired P.W.1. In the meanwhile, P.W.2 and P.W.3, her parents came there, all went to the Police Station, lodged a complaint/Ex.P1. P.W.6 registered FIR/Ex.P3, visited the scene of occurrence, prepared observation mahazar/Ex.P2 and rough sketch/Ex.P4, enquired the witnesses present there, on getting information about the petitioner present near the bus stand, P.W.6 along with P.W.2 reached the place and on identification of P.W.2, the accused was arrested. On completion of investigation, charge sheet filed. He would submit that in this case all the witnesses supported the case of the prosecution, the evidence of P.W.1/victim is corroborated by P.W.2 to P.W.4. The petitioner earlier raised the same defence before the Trial Court as well as the Lower Appellate Court, both the Courts rejected the petitioner's contention and convicted the petitioner. Hence prayed for dismissal.

6.Considering the submissions made and on perusal of the materials, it is not in dispute that the petitioner and P.W.1 are relatives. The specific case of the petitioner is there was some dispute between the petitioner and P.W.2,



hence on a motivated complaint the petitioner was implicated in this case.

P.W.1's admission is that she called emergency number 100, they came there within 20 minutes and took the petitioner along with them. From the RTI reply, it is confirmed that there was no emergency call received on 12.08.2015 at about 7.30 a.m. to the control room. This fact explained during 313 Cr.P.C. questioning along with the RTI report, but the Trial Court ignored the same by giving a reason that documents filed along with the statement of accused during 313 Cr.P.C. questioning cannot be considered, is not proper. Added to it, the evidence of P.W.1 to P.W.3 is that when they went to the Police Station, they saw the accused in the Police Station at 10.30 a.m. and they came out from Police Station around 6.30 p.m. In such circumstances, the evidence of P.W.6 arresting the accused at 4.45 p.m. near A.S.Fast Food at Gandhipuram, Coimbatore becomes doubtful. In this case, the evidence of P.W.2 to P.W.4 are hearsay evidence and all informed by P.W.1. The specific case is that P.W.1 called emergency number which is disproved. The evidence of P.W.5/pushcart vendor, who is at the mercy of Police is highly doubtful. Further, in this case no test identification parade conducted. P.W.5 identifying the petitioner after three years for the first time in the Court is also unbelievable.



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Hence, this Court finds the conviction and sentence imposed by the Trial Court which was confirmed by the Lower Appellate Court not sustainable.

7. Accordingly, the order passed by the learned Judicial Magistrate No.III, Coimbatore in C.C.No.444 of 2015 dated 03.09.2018 which was confirmed by the learned IV Additional Principal and Sessions Judge, Coimbatore in C.A.No.407 of 2018 dated 30.03.2021 is set aside. The petitioner is acquitted from all the charges levelled against him.

8. In the result, the Criminal Revision Petition stands allowed. Consequently, connected miscellaneous petition is closed.

30.08.2024

Index: Yes/No
Speaking Order/Non-Speaking Order
Neutral Citation: Yes/No
cse



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WEB COPY

- To
- 1.The Sub-Inspector of Police,
B-4 Race Course Police Station,
Coimbatore.
 - 2.The Judicial Magistrate No.III,
Coimbatore.
 - 3.The IV Additional Principal and Sessions Judge,
Coimbatore.
 - 3.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.
cse

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