



Crl.R.C.No.842 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.842 of 2021

Gunasekaran

... Petitioner

Vs.

State by
Inspector of Police,
B2 R.S Puram Police Station,
Coimbatore District.
In Cr.No.950/2017.

... Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C, to set aside the judgment passed in Crl.A.No.120/2019 passed by the 4th Additional District Sessions Court of Coimbatore dated 13/08/2021 confirming the the judgment of the Judicial Magistrate No.I of Coimbatore in C.C.No.784/2017 dated 27.02.2019 and to allow this criminal revision.

For Petitioner : Mr.M.Saravanakumar

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor



ORDER

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The petitioner was convicted by the learned Judicial Magistrate No.I, Coimbatore (Trial Court) *vide* judgment, dated 27.02.2019 in C.C.No.784 of 2017 and sentenced to undergo two months Rigorous Imprisonment and to pay fine of Rs.500/-, in default to undergo fifteen days Simple Imprisonment for offence under Section 75(1)(c) of the Tamil Nadu City Police Act and also sentenced to undergo two months Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo fifteen days Simple Imprisonment for offence under Section 506(i) of IPC. Challenging the same, the petitioner preferred an appeal before the learned IV Additional District and Sessions Judge, Coimbatore in Crl.A.No.120 of 2019 and the same was dismissed *vide* judgment, dated 13.08.2021. Aggrieved over the same, the present criminal revision case is filed.

2.Gist of the case is that the defacto complainant employed as Contract Labour in Coimbatore Corporation residing with his family at Kamarajapuram. He used to go work at 05.00 a.m in the morning and come back home at 10.30 p.m. On 05.09.2017, when PW1's daughter was



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playing near Theertha Poomari Amman Temple, the petitioner in a drunken state called PW1's daughter, made her sit on his lap, used bad words and shown bad signs. This was witnessed by Sivaraman/PW3 and Arunkumar/PW4 who questioned the petitioner and he fled from the scene. On the next day *i.e.*, 06.09.2017, PW3 and PW4 informed PW1 about the incident. At about 10.30 a.m, PW1 found the petitioner near auto rickshaw stand and questioned him. At that time, the petitioner threatened PW1 using abusive words. PW1 along with his wife/PW2, PW3, PW4 went to the Police Station and lodged the complaint (Ex.P1). PW6 received the complaint (Ex.P1), registered FIR (Ex.P3) in Crime No.950 of 2017 for offence under Section 75(1) of the Tamil Nadu City Police Act and 506(i) IPC. PW7/Sub Inspector of Police took up investigation, visited the scene of occurrence, prepared Observation Mahazar (Ex.P5), Rough Sketch (Ex.P4) in presence of PW5 and on completion of investigation, filed charge sheet before the Trial Court. During trial, on the side of the prosecution, seven witnesses examined as PW1 to PW7 and five documents marked as Exs.P1 to P5. On the side of the defence, no witness examined and no document marked. On conclusion of trial, the Trial Court convicted the petitioner as



stated above.

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3.The learned counsel for the petitioner submitted that the petitioner has been falsely implicated in this case and no offence committed. The petitioner and PW1 to PW5 hail from the same locality and they all belong to the lower strata of the society. In this case, eye witnesses are PW3 and PW4, but their evidence highly artificial for the reason that they not informed the indecent act of the petitioner immediately to PW1 and PW2, the parents of the victim girl despite PW1 and PW2 available in their house. On the other hand, PW3 and PW4 waited for a day and on next day morning they complained to PW1 and PW2. The learned counsel further submitted that PW1 to PW5 are all relatives which fact suppressed by PW1 except admitting PW3 and PW4 are from the same area. But PW2, wife of PW1 admits PW3 and PW4 are relatives. PW3 and PW4 stated that they along with PW1 and PW2 questioned the petitioner on the next day when he was near rickshaw stand. PW1 does not mention about the presence of PW3 and PW4 with him when he questioning the petitioner. Hence, the evidence of PW3 and PW4 are highly doubtful. He further submitted that the petitioner is living in the same area for several years and not come under



adverse notice prior or after the occurrence. But the petitioner had an habit of drinking, during that time he used to raise voice and pick up quarrel with others, for that reason a false case foisted against him. PW2, mother of the victim girl stated that her daughter not complained about incident and indecent act of the petitioner. The Trial Court not considered the evidence in holistic manner and convicted the petitioner. The petitioner is now working as Housekeeper in Sankara Eye Hospital at Coimbatore having little income and living with his family. Except this case, either prior or after the alleged occurrence the petitioner not came under adverse notice. Hence, he prays for setting aside the judgments of the Courts below.

4.The learned Additional Public Prosecutor appearing for the respondent Police opposed the submissions of the learned counsel for the petitioner and submitted that PW1 and PW2 are the parents of the victim girl who were informed by PW3 and PW4 about the petitioner's indecent act. On 05.09.2017, the petitioner in a drunken state made the victim girl sit on his lap, used bad words showing bad signs. On the next day, PW1 along with PW3 and PW4 questioned the petitioner but shown no remorse. On



the other hand threatened PW1 and others using abusive words. During trial, on the side of the prosecution, seven witnesses examined as PW1 to PW7 and five documents marked as Exs.P1 to P5. The petitioner in a drunken state behaved in an indecent manner using abusive words and action against PW1's daughter. He fairly submitted that the petitioner has no bad antecedents either prior to the incident or after the incident.

5.This Court considered the rival submissions and perused the materials available on record.

6.In this case, the petitioner and PW1 to PW5 hail from the same locality with same footing both socially and economically. On 05.09.2017, the petitioner in a drunken state, used bad words to action to the daughter of PW1 and PW2 which was questioned by PW3 and PW4. On the next day, PW1 to PW4 questioned the petitioner about the indecent act. At that time, the petitioner said to have abused and threatened PW1 and others. In this case, the eye witnesses projected are PW3 and PW4. It is strange to see that PW3 and PW4 finding the petitioner teaching bad words showing bad signs



to PW1's daughter, not informed the same to her parents/PW1 & PW2 who are very much available at that point of time. On the other hand, they informed the incident on the next day to PW1 and PW2. It is to be seen that the victim girl not informed her mother or father which is a natural conduct of a frightened girl or a child who experienced such distasteful act.

7.It is seen that the alleged occurrence said to have taken place near Theertha Poomari Amman Temple, a public place. Except the relatives of the victim girl, no independent witness examined though the occurrence took place in public view. It is also highly artificial to see that no independent witness examined despite such act committed in a public place. This causes serious doubt on the prosecution case.

8.In view of the above, this Court finds that the prosecution miserably failed to prove the case beyond reasonable doubt. Hence, this Court set asides the judgment of the Trial Court, dated 27.02.2019 in C.C.No.784 of 2017 and the judgment of the Lower Appellate Court, dated 13.08.2021 in Crl.A.No.120 of 2019.



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9. Accordingly, this criminal revision case stands allowed and the petitioner is acquitted from all the charges levelled against him. Bail bond if any executed shall stand cancelled. Fine amount if any paid shall be refunded.

30.08.2024

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

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To

1. The IV Additional District & Sessions Judge,
Coimbatore.
2. The Judicial Magistrate No.I,
Coimbatore.
3. The Inspector of Police,
B2 R.S Puram Police Station,
Coimbatore District.
4. The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR, J.

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