



Crl.R.C.No.633 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.02.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.633 of 2022

Sri Ganesh

... Petitioner

Vs.

State represented by
The Inspector of Police,
Railway Police Station,
Coimbatore.
Cr.No.141 of 2018.

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to call for the records relating to the judgment dated 12.04.2022 made in Crl.A.No.325 of 2019 on the file of the V Additional District and Sessions Judge, Coimbatore confirming the conviction made in the judgment dated 30.09.2019 in C.C.No.247 of 2019 on the file of the Judicial Magistrate No.VI, Coimbatore, to undergo rigorous imprisonment for a period of two years and to pay a sum of Rs.10,000/- as fine and in default to pay the fine amount, to undergo four months simple imprisonment for an alleged offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, set aside the same.



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For Petitioner : Mr.D.R.Arun Kumar
For Respondent : Mr.L.Baskaran,
Government Advocate (Crl. Side)

ORDER

The petitioner was convicted *vide* judgment, dated 30.09.2019 in C.C.No.247 of 2019 passed by the learned Judicial Magistrate No.VI, Coimbatore and sentenced to undergo two years Rigorous Imprisonment and to pay a fine of Rs.10,000/-, in default to undergo four months Simple Imprisonment for offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act. Aggrieved over the same, the petitioner preferred an appeal before the learned IV Additional District and Sessions Judge, Coimbatore in Crl.A.No.325 of 2019 and the same was dismissed *vide* judgment, dated 12.04.2022 confirming the judgment of the Trial Court. Challenging the same, the present Criminal Revision Case is filed.

2.The case of the prosecution is that on 01.05.2018, PW1, the defacto complainant boarded Island Express (Train No.16526) at Bangalore and, was travelling to Thiruvalla in Seat No.20 of S8 Coach and that the petitioner was travelling in the same coach in Seat No.18. During the night journey between Thirupur and Coimbatore, when PW1 was sleeping in lower berth, the



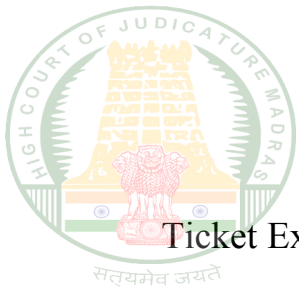
petitioner had touched her private parts in an indecent manner and caused intimidation, fear and embarrassment. PW1 shouted at the petitioner and informed the incident to PW4, Train Ticket Examiner and to PW3 & PW5, Railway Protection Force Constables who were on escort duty in the train. On reaching Coimbatore Junction, PW1 was enquired by PW6, Sub Inspector, Railway Police. PW6 took the petitioner into custody and produced him before PW8, Sub Inspector, Railway Police. On the complaint of PW1, PW8 registered FIR (Ex.P4) in Crime No.141 of 2018 for offence under Section 4 of Tamil Nadu Prohibition of Women Harassment Act and Section 354 IPC. On completion of investigation, charge sheet filed before the Trial Court listing 12 witnesses and documents. During trial, on the side of the prosecution, nine witnesses examined as PW1 to PW9 and four documents marked as Exs.P1 to P4. No witness examined and no document examined on the side of the defence. On conclusion of trial, the Trial Court convicted the petitioner as stated above and the same confirmed by the Lower Appellate Court.

3.The learned counsel for the petitioner submitted that PW1, an Advocate picked up a quarrel with the petitioner at the time of boarding the train at Bangalore with regard to the berth and that there was heated arguments and exchange of words. Keeping it in her mind, when the petitioner accidentally



slipped and touched PW1, she projected it as though the petitioner misbehaved

with her. PW1 lodged a complaint to PW6 after the train reaching Coimbatore Junction. In the complaint (Ex.P1) though PW1 stated that the petitioner touched her private parts and misbehaved with her, no details given with regard to the place and time of the alleged misbehaviour. The Special Report (Ex.P3) given by PW2 is dated 02.05.2018. PW1 admits that she continued her travel to Thiruvalla and lodged the complaint (Ex.P1) only after returning back on 02.05.2018, hence the complaint (Ex.P1), dated 02.05.2018 is doubtful. The learned counsel further submits that the report (Ex.P3) is contradictory to the evidence of PW2, PW3, PW4 and PW5. PW7 is projected as a co-passenger who gives exaggerated and contradictory statement with regard to earlier incident involving the petitioner and, further about he saw the petitioner misbehaving with PW1. In this case, PW7's travel credentials not produced and proved. The Trial Court disbelieved the evidence of PW7 with regard to the earlier incident and his improvised statement. Now, the only evidence available is PW1 who had motive who had a quarrel with the petitioner at the time of boarding the train in Bangalore. The other witnesses namely PW2, PW3, PW4 and PW5 are in the nature of hearsay and they are not direct witnesses to the alleged occurrence. In this case, except for PW7, no other co-passengers travelling in the train examined. Added to it, even PW4, Train



Ticket Examiner was examined at a later point of time not immediately.

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4.He further submits that the Investigating Officer not conducted proper investigation and just gone by the statement of PW1 and and filed the charge sheet. The Trial Court failed to consider the contradiction in the evidence of the prosecution witnesses. There is also a confusion regarding which control room PW3, PW4, PW5 contacted, specifically whether it was Salem, Coimbatore, Chennai or Bangalore. PW3 and PW5 in their evidence confirmed that there was quarrel between the petitioner and PW1 earlier. Theses facts were not considered by the Trial Court as well as by the Lower Appellate Court, hence the conviction of the petitioner is not sustainable.

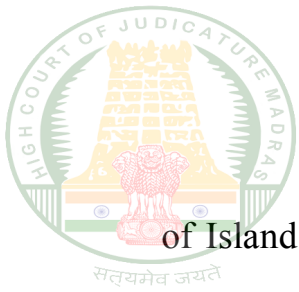
5.The learned Government Advocate (Crl. Side) appearing for the respondent Police submitted that on 01.05.2018, PW1 boarded the Island Express (Train No.16526) at Bangalore and travelling in Seat No.20 of S8 coach to Thiruvalla and that the petitioner was travelling in the same coach in Seat No.18. During the night journey, when PW1 was sleeping in her berth, the petitioner touched her private parts and misbehaved with her in an indecent manner and caused intimidation, fear, embarrassment and nuisance to her. PW1 immediately complained to PW4, Train Ticket Examiner. PW3 & PW5,



Constables of Railway Protection Force, who were on escort duty in the train,

informed the incident to the control room and thereafter to the Railway Police at Coimbatore. PW6 received the complaint (Ex.P1) took the petitioner and produced him to PW8. PW8 registered the FIR (Ex.P4), handed over the investigation to PW9. PW9 examined the witnesses, collected materials and filed charge sheet before the Trial Court. In this case, on detailed analysis of evidence and materials produced, the Trial Court convicted the petitioner for offence under Section 4 of Tamil Nadu Prohibition of Woman Harassment Act and sentenced him to two years with fine of Rs.10,000/-. He further submitted that during investigation, the petitioner was in prison as under trial prisoner for 7 days and after conviction and till the suspension of sentence was granted by this Court, he was in prison for 22 days, in total, the petitioner detained for 29 days in prison.

6.Considering the rival submissions and on perusal of the materials, it is seen that PW1 and PW7 are victim and witness to the alleged occurrence which took place on 01.05.2018 in Island Express. The evidence of PW7 is with embellishment and contradictions to the evidence of PW1, hence the Trial Court disbelieved a portion of the evidence of PW7. It is to be noted that the travel details of PW7 was not collected to confirm PW7 travelled in S8 Coach



of Island Express on 01.05.2018 along with the petitioner, hence travelling of

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PW7 in the said train on 01.05.2018 is highly doubtful and his evidence does not inspire confidence. In this case, PW1 raised alarm, shouted at the petitioner and immediately PW3, who was on escort duty along with PW5 had come there, questioned the petitioner and informed the same to the control room. Thereafter, PW2 came to S8 Coach, took the petitioner to the Railway Police Station, Coimbatore Junction and produced before PW8. Since PW1 had urgent work in Thiruvalla, she continued her travel and gave a complaint and statement on the next day. The Trial Court placing reliance on 164 Cr.P.C statement is not proper for the reason that the statement under Section 164 Cr.P.C of PW1 is not produced, attention drawn to the witness.

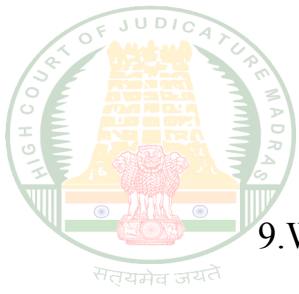
7.Be that as it may, in this case, PW1 stated about the petitioner misbehaved with her and touching her private parts. There is no reason for PW1 to give false complaint against the petitioner, a co-passenger in the coach. Added to it, the petitioner not disputed his travel in S8 Coach and further, he was questioned in the S8 Coach by PW3, PW4 and PW5. On complaint of PW1, PW2 took the petitioner from S8 Coach and produced before PW8, Sub Inspector of Police, Railway Police Station, Coimbatore. Hence, the petitioner as well as PW1 travelling in S8 Coach of Island Express on 01.05.2018 is



confirmed. Though the evidence of PW1 is with exaggeration, the graveman of

the complaint (Ex.P1) is that the petitioner misbehaved with her when she was travelling to Thiruvalla in Island Express. Considering all these aspects, the Trial Court convicted the petitioner for offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act and the same was confirmed by the Lower Appellate Court. The petitioner's defence that he had slip and fall in the running train, due to which he accidentally touched PW1 without any motive or any sexual intention is without any corroborative material. The evidence of PW1, who is an elderly person, cannot be totally discarded on this explanation.

8.In view of the above, this Court finds that the conviction of the petitioner for offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act is sustainable and the sentence of two years is too harsh and punitive. Hence, this Court modifies the sentence of two years for offence under Section 4 of Tamil Nadu Prohibition of Women Harassment Act to the period already undergone by him and sustaining the fine amount of Rs.10,000/-.



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9. With the above modification, this Criminal Revision Case is partly-
allowed.

10.02.2025

Speaking Order/Non Speaking Order

Index : Yes/No

Neutral Citation: Yes/No

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To

1. The IV Additional District and Sessions Judge,
Coimbatore.
2. The Judicial Magistrate No. VI,
Coimbatore.
3. The Inspector of Police,
Railway Police Station,
Coimbatore.
4. The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR, J.

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