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Crl.R.C.No.783 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.03.2025

CORAM

THE HON'BLE MR. JUSTICE P.VELMURUGAN

Crl.R.C.No.783 of 2023

Rakesh

... Petitioner

Vs

The Inspector of Police,
AWPS, Namakkal.

... Respondent

PRAYER: Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C., to convert the acquittal order dated 15.02.2023 passed in C.C.No.438 of 2020 on the file of the Judicial Magistrate, Additional Mahila Court at Namakkal as an honourable acquittal for the petitioner.

For Petitioner : Mr.B.Ullasa Velan

For Respondent : Mr.S.Sugendran

Additional Public Prosecutor

ORDER

This Criminal Revision Petition has been filed to convert the acquittal order dated 15.02.2023 passed in C.C.No.438 of 2020 on the file of the Judicial Magistrate, Additional Mahila Court at Namakkal as an honourable acquittal for the petitioner.



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2. Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondent-Police and perused the materials available on record.

3. Learned counsel for the petitioner submitted that based on the complaint given by the de-facto complainant, the respondent-Police registered a case in Crime No.17 of 2019 against the petitioner/accused and others for the offences under Sections 498(A) and 506(i) of IPC. The respondent-Police, after completion of investigation, laid a charge sheet against the petitioner herein/A1 and two others before the learned Judicial Magistrate, Additional Mahila Court at Namakkal. The learned Magistrate has taken the case on file in C.C.No.438 of 2020. Pending C.C, the petitioner/A1 and A2 and A3 who are parents of the petitioner have filed Criminal Original Petition No.7450 of 2021 before this Court to quash the said case. This Court after hearing the matter, discussed elaborately and quashed the case in C.C.No.438 of 2020, against the parents of the petitioners namely A2 and A3 alone and directed the trial court to complete the trial with regard to A1, who is the petitioner herein, within a period of six months. Accordingly, the petitioner faced the trial.



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4. The learned Magistrate, after completion of trial, did not find the petitioner guilty for the said offences and acquitted him from the said charges. The trial court failed to consider/analyse the defence taken by the petitioner, instead of acquitting him from all the charges honorarily, acquitted the petitioner only on the ground of benefit of doubt that the prosecution has not proved the case beyond all reasonable doubt. Once the trial court found that the charges were not proved as against the petitioner herein, it ought to have acquitted the petitioner honorarily. The trial court acquitted the petitioner stating that the prosecution has not proved the case beyond all reasonable doubt which is a stigma to the petitioner. Hence, the petitioner has approached this Court to remove that stigma.

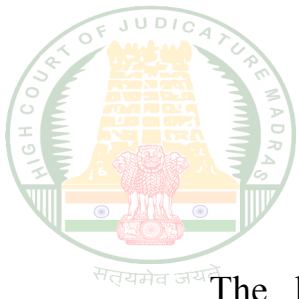
5. The learned counsel for the petitioner submitted that the dispute between the parties is matrimonial dispute. The alleged occurrence said to have taken place on 26.11.2017. After the date of the alleged occurrence, both the petitioner and the de-facto complainant lived together at Coimbatore, till the petitioner left for London. However, the



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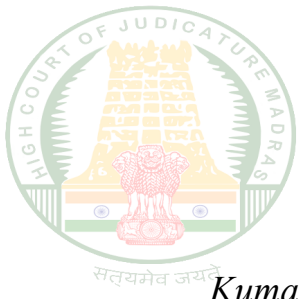
complaint was given only in the year 2019, after two years from the date of occurrence. The complaint was given by P.W.1 only after the petitioner filed an application on 08.07.2019 before the Family Court at London, for renewal of his minor daughter Adya's passport. After due receipt of the London High Court Summons from the petitioner's (London) Solicitor by E-mail on 08.08.2019 and 13.08.2019, as a counter blast, P.W.1, has lodged a complaint before the respondent-Police on 15.08.2019. F.I.R was registered without conducting a preliminary enquiry and the Investigation Officer on the instructions of the Superintendent of Police, Namakkal recommended for a Look-Out notice to Immigration Department through the Superintendent of Police, Namakkal District. Hence, the respondent-Police failed to follow the law laid down by the Hon'ble Supreme Court in the case of *Lalitha Kumari Vs. Government of Uttar Pradesh and others reported in 2014(2) SCC(1)*, wherein it is stated that a preliminary enquiry in the case of matrimonial dispute is mandatory. In this case, no preliminary enquiry was conducted. There is no explanation for the delay in giving the complaint for the alleged occurrence which took place in the year 2017.



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The learned counsel for the petitioner further submitted that the petitioner's mother/A3 has filed Crl.O.P.No.31032 of 2019 before this Court to quash the F.I.R in Crime No.17 of 2019 on the file of the respondent Police and to stay of further investigation, in which, this Court granted interim stay vide order dated 19.11.2019. When the order of stay was in force, the respondent-Police completed the investigation and laid a charge sheet. The respondent has not intimated this Court that the investigation was completed prior to Crl.O.P.No.31032 of 2019. Subsequently, the accused persons filed a criminal original petition in Crl.O.P.No.7450 of 2021 to quash the case in C.C.No.438 of 2020 pending on the file of the learned Judicial Magistrate Court, (Additional Mahila Court), Namakkal. This Court, found that there are no prima facie materials available as against the parents of the petitioner and quashed the case as against them. Hence, the petitioner alone is facing the trial in C.C.No.438 of 2020. P.Ws.2 and 3, who are parents of the P.W.1/de-facto complainant have not supported the case of the prosecution and they turned hostile. P.W.4- Investigating Officer has also admitted that they have not followed the principles laid down in the case of *Lalitha*



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Kumari (supra). The petitioner and his minor child are U.K citizens.

Without obtaining permission from the Central Government, the respondent-Police laid a charge sheet and the same was taken on file by the Judicial Magistrate concerned, which is in violation of Section 188 Cr.P.C., The Investigating Officer violated the mandatory provision and also the law laid down by the Hon'ble Supreme Court. The petitioner has not committed any offence as alleged by the prosecution. The learned Magistrate acquitted the petitioner on the ground that the prosecution failed to prove the case beyond all reasonable doubt and extended the benefit of doubt to the petitioner and acquitted him on the ground of benefit of doubt which caused a stigma to the petitioner. Hence, he filed this criminal revision petition.

6. In support of his contentions, the learned counsel for the petitioner placed reliance on the judgment reported in *2014 SCC online Mad 9371*.



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7. Learned Additional Public Prosecutor appearing for the respondent-Police submitted that the de-facto complainant was examined as P.W.1. She has clearly spoken about the allegations against the petitioner and reiterated the allegations made in the complaint. Though the parents of the defaco complainant were examined as P.Ws.2 and 3, they have stated that they have not remembered the incident and the matter was settled subsequently. Considering the view that the dispute between the parties is matrimonial issue and the same is settled between them, further the de-facto complainant is not interested in prosecuting the case, the trial court acquitted them.

8. The case of the prosecution is that the petitioner harassed the de-facto complainant and also threatened her with dire consequences. At the instance of the parents of the petitioner/A2 and A3, the petitioner had beaten the defaco complainant and driven her from the matrimonial home, which was questioned by the de-facto complainant, the parents of the petitioner refused to take her back to the matrimonial home and also instigated the petitioner to torture the de-facto complainant. After



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registration of F.I.R, the respondent-Police completed the investigation and filed a final report as against the petitioner and his parents for the offences under Sections 498(A) and 506(i) IPC. Pending investigation, the third accused/petitioner's mother filed criminal original petition in Crl.O.P.No.31032 of 2019 seeking to quash the F.I.R and to stay further investigation. Though interim stay was granted and subsequently the investigating agency laid the charge sheet sheet before the learned Judicial Magistrate, Additional Mahila Court at Namakkal and the same was taken on file in C.C.No.438 of 2020. Subsequently, the petitioner and his parents once again, moved this Court for quashing the case in C.C.No.438 of 2020. This Court, quashed the case in respect of the parents of the petitioner/A2 and A3 and dismissed the criminal original petition insofar as the petitioner is concerned. Hence, the petitioner faced the trial. During trial, totally four witnesses were examined on the side of the prosecution. Out of four witnesses, P.W.1 is the de-facto complainant and P.Ws.2 and 3 are parents of the de-facto complainant. P.W.4 is the Investigating Officer. Eight documents were marked on the side of the prosecution. After completion of trial, the learned Magistrate

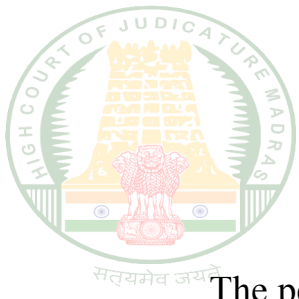


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acquitted the petitioner extending the benefit of doubt in favour of the petitioner/A1 and acquitted him. The petitioner herein has challenged the manner of acquittal granted by the trial court.

9. On a reading of complaint and also the evidence of P.W.1, it is admitted fact that the petitioner and the de-facto complainant are husband and wife. The petitioner got married to the de-facto complainant on 15.02.2013. Out of their wedlock, they gave birth to a girl child on 09.07.2014. When the de-facto complainant returned India, the accused/A2 & A3 demanded the income of the de-facto complainant and the accused insisted the defacto complainant to get a joint account. Further, the petitioner had taken the child to London and also approached the Family Court at London. Hence, the de-facto complainant has filed the complaint as against the accused persons. This Court, vide order dated 20.07.2022, in Crl.O.P.No.7450 of 2021 filed by the accused, quashed the case against the parents of the petitioner/A2 and A3. Neither the prosecution nor the de-facto complainant challenged the said order. Further, this Court dismissed the petition as against the petitioner herein.



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The petitioner herein also has not challenged the findings of this Court in CrI.O.P.No.7450 of 2021 vide order dated 20.07.2022. Subsequently, during trial as against the petitioner, the de-facto complainant reiterated the allegations mentioned in the complaint and deposed the same before the trial court. P.Ws.2 and 3 have stated that they have not remembered the occurrence and they have stated that it is a false case, for which, the learned Magistrate has also given reason that the de-facto complainant did not want to pursue the case. However, on a reading of the complaint and also the evidence of P.W.1/de-facto complainant, the trial court came to the conclusion that the prosecution has not followed the law laid down by the Hon'ble Supreme Court and also there is a lacuna by the investigating agency in the investigation and filing of charge sheet.

10. It is a settled proposition of law that mere defect in the investigation is not the ground for acquittal. Neither the prosecution nor the de-facto complainant have challenged the judgment of acquittal passed by the trial court. Though there are prima facie materials available as against the accused persons, the prosecution miserably failed



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to prove the case of the prosecution beyond all reasonable doubt. Hence, this Court does not find any reason to interfere with the order passed by the trial court, in the absence of any appeal filed either by the prosecution or by the de-facto complainant..

11. On a reading of the entire materials, background of the case, relationship between the parties and the earlier proceedings, this Court finds that there are no materials available to interfere with the judgment of the trial court. It is not the case that the petitioner and de-facto complainant are strangers and in order to wreck vengeance, false complaint was made.

12. Admittedly, the petitioner was not examined as defence witness and he has not produced any oral and documentary evidence. However, the de-facto complainant was examined as P.W.1. From her deposition, it is seen that the petitioner harassed the de-facto complainant. Though there are prima facie materials available as against the parents of the petitioner, the case was quashed in respect of



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them. Neither the de-facto complainant nor the prosecution has filed appeal. Though the incident has taken place, the de-facto complainant does not want to pursue the case further. Considering all these factors, the trial court acquitted the petitioner on the ground of benefit of doubt.

13. Judgment relied on by the learned counsel for the petitioner is not applicable to the case on hand. In the referred case, none of the witnesses have spoken about the allegations and hence, the Court considered the petition and granted honourable acquittal. Whereas, in this case, the de-facto complainant was examined as P.W.1 and the complaint was marked as Ex.P1. On a combined reading of the evidence of P.W.1 and Ex.P1, there are prima facie allegations levelled against the petitioner in the complaint and in the deposition of P.W.1 during trial before the trial court, the de-facto complainant has clearly deposed that the petitioner has harassed her. Since there was no corroborative evidence on the defacto complainant's side and further, there is some flaw in the investigation, the trial court acquitted the petitioner on the ground of benefit of doubt.



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14. In view of above facts and circumstances, this Court does not find any reason to interfere with the findings of the Court below. The petitioner is not entitled to the relief as sought for in this petition and he is not entitled to get honourable acquittal.

15. In view of the same, this Criminal Revision Petition is dismissed.

19.03.2025

mfa

Index: Yes/No

Speaking Order: Yes/No

Neutral Citation: Yes/No

To

1. The Judicial Magistrate, Additional Mahila Court at Namakkal .
2. The Inspector of Police,
AWPS, Namakkal.
3. The Public Prosecutor,
High Court, Chennai.



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P.VELMURUGAN, J.

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