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Crl.R.C.No.882 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 17.04.2025

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.882 of 2022

1.Purushoth

2.Sakthivel

3.Ranganathan

... Petitioners/A1 to A3

Versus

1.Jayabal

2.State by the Sub-Inspector of Police,

Gingee Police Station,

Villupuram District.

(Crime No.234/2015)

... Respondents

PRAYER : Criminal Revision Petition filed under Sections 397 and 401 of Cr.P.C. praying to call for records and set aside the judgment dated 07.06.2022 made in C.A.No.91 of 2018 on the file of the II Additional District and Sessions Court, Tindivanam and acquit them.

Petitioners : Mr.P.M.Duraiswamy

For Respondent-1 : Mr.P.Sankaranarayanan

For Respondent-2 : Mr.L.Baskaran

Government Advocate (Crl. Side)



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ORDER

This Criminal Revision Case has been filed by the petitioners/A1 to A3 seeking to set aside the judgment dated 07.06.2022 made in C.A.No.91 of 2018 on the file of the II Additional District and Sessions Court, Tindivanam and acquit them.

2.The contention of the learned counsel for petitioners is that in this case the first respondent/de-facto complainant lodged a complaint to the Sub Inspector of Police, Gingee Police Station/second respondent and a case in Crime No.234 of 2015 registered for offences under Sections 294(b) of I.P.C. r/w Section 4 of Tamil Nadu Women Harassment Act and Sections 448, 323, 352 and 506(ii) of I.P.C. On completion of investigation, charge sheet filed and the same was taken on file in C.C.No.94 of 2017. During trial, on the side of prosecution, PW1 to PW11 examined and Exs.P1 to P7 marked. On the side of accused, no witnesses examined and no documents marked.



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On conclusion of the trial, the trial Court acquitted the accused/A1 to A4, against which, the respondent filed an appeal in C.A.No.91 of 2018 before the learned II Additional Sessions Judge, Tindivanam. The Sessions Judge, by judgment dated 19.08.2019, confirmed the acquittal and dismissed the appeal.

3.The learned counsel submitted that he is making a legal submission not going into the merits of the case, since both the Courts below dismissed the case of the first respondent on merits. He further submitted that the first respondent aggrieved by the acquittal order dated 19.08.2019, filed a revision before this Court in Crl.R.C.No.1366 of 2019. This Court, by the order dated 04.02.2022 reversed the judgment of acquittal, but finding that there was no specific overt act attributed against A4/Adhi Naidu the acquittal confirmed on the other hand found the petitioners/A1 to A3 guilty for the offences charged, reversed the acquittal and remitted the case back to the Lower Appellate Court to award the sentence, since the revisional Court has no power to award

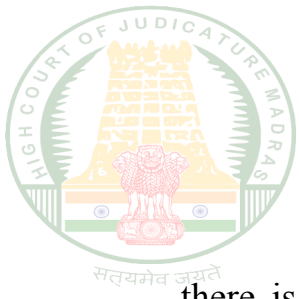


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sentence. Pursuant to the said order, the Lower Appellate Court received the case bundle, without considering the appeal independently, referring to the order passed by this Court in Crl.R.C.No.1366 of 2019 mechanically convicted the petitioners/A1 to A3. By its judgment, no independent assessment of the evidence of witnesses and materials considered. According to the petitioners, this judgment is perverse, not sustainable in the eye of Law. Hence, the above revision is filed.

4.In support of his contention, the learned counsel for petitioners relied upon the judgment of the Hon'ble Apex Court in the case of ***Joseph Stephen and others vs. Santhanasamy and others*** in Criminal Appeal Nos.90-93 of 2022, wherein the Apex Court referred to various judgments and finally held that the plain reading of sub-section (3) of Section 401 of Cr.P.C., it is clear that there is a bar to the High Court to convert a finding of acquittal into one of conviction and the High Court in its revisional power to examine whether



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there is manifest error of law or procedure, however, after giving its own findings on the findings recorded by the Court acquitting the accused and after setting aside the order of acquittal, the High Court has to remit the matter to the trial Court or the First Appellate Court, as the case may be. Further, if the order of acquittal is passed by the First Appellate Court, in that case, the High Court has two options available, (i) to remit the matter to the First Appellate Court to rehear the appeal or (ii) to remit the matter to the trial Court for retrial. In this case, the order of acquittal was passed by the trial Court, which was confirmed by the Lower Appellate Court. In view of the same, this Court erred in remitting the matter to the Lower Appellate Court, instead, it ought to have sent the case to the trial Court.

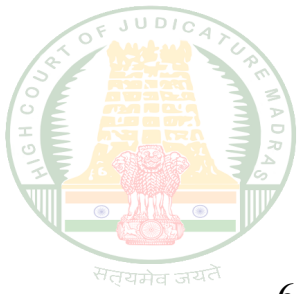
5.The learned counsel appearing for the first respondent vehemently opposed the petitioner's contention submitting that this Court in its revisional power can look into the case, if manifest error of law or perversity



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committed. In this case, no doubt this Court had gone into the facts of the case, dealt in detail and thereafter finding that PW1/de-facto complainant and his wife, who is an injured witness, was examined as PW2 and one of the victim was examined as PW7 and the Doctor, who gave treatment to PW2, examined as PW8. The mahazar witnesses PW5 and PW6 confirmed the prosecution case. Since the occurrence took place in a village, where everybody known to each other, there is likelihood though PW3 and PW4 seen the occurrence, not supported the case of the prosecution. But that would not turn the case in favour of the petitioners. This Court considering the evidence, materials and the medical records had rightly found the judgment of the trial Court and Lower Appellate Court not sustainable and reversed the judgment of acquittal, remitted the case back to the Lower Appellate Court. This Court in its wisdom remanded the case to the Lower Appellate Court, which cannot be questioned. Hence, he strongly opposed the petitioners' contention of remitting back the case to the trial Court.



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6.Considering the submissions made and on perusal of the material, it is seen that in this case on the complaint of the de-facto complainant F.I.R. Registered in Crime No.234 of 2015 for offences under Sections 294(b) of I.P.C. r/w Section 4 of Tamil Nadu Women Harassment Act and Sections 448, 323, 352 and 506(ii) of I.P.C. Thereafter, on completion of investigation, charge sheet filed before the trial Court. During trial, on the side of prosecution, PW1 to PW11 examined and Exs.P1 to P7 marked. On the side of defence, no witnesses examined and no documents marked. The trial Court finding that the prosecution failed to prove the case, acquitted the petitioners, against which, an appeal has been filed by the first respondent/de-facto complainant before the Sessions Court. The Sessions Court confirmed the acquittal and dismissed the appeal. Aggrieved over the said judgment, the first respondent/de-facto complainant preferred a revision before this Court in Crl.R.C.No.1366 of 2019. This Court, by the order dated 04.02.2022, confirmed the acquittal of A4/Adhi Naidu but set aside the acquittal of the



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petitioners, who are A1 to A3 in C.C.No.94 of 2017. Section 401(3) of Cr.P.C. prohibits High Court from converting a finding of acquittal into a conviction in exercising its revisional powers. This Court in all fairness, if found the finding of the Lower Appellate Court as well as trial Court legally not sustainable, after taking appropriate decision, ought to have sent back the case to the trial Court. But this Court earlier remitted the case back to the Lower Appellate Court instead of trial Court, which is not proper. Further the Lower Appellate Court not considered the case independently, and referring the finding of this Court in the Revision, mechanically convicted the petitioners, which is not only perverse, against Law.

7.In view of the same, the conviction rendered in C.A.No.91 of 2018 dated 07.06.2022 by the learned II Additional District and Sessions Judge, Tindivanam, is hereby set aside and the case is remitted back to the trial Court (Judicial Magistrate, Gingee) for fresh consideration.



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8. With the above observation, the Criminal Revision Case is allowed.

17.04.2025

Index : Yes / No

Internet : Yes/No

Speaking / Non-speaking order
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To

1. The Sub-Inspector of Police,
Gingee Police Station,
Villupuram District.
2. The II Additional District and Sessions Court,
Tindivanam.
3. The Judicial Magistrate,
Gingee.
4. The Public Prosecutor,
High Court, Madras.

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M.NIRMAL KUMAR, J.

rsi

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