



Crl.R.C.No.1326 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 04.09.2024
PRONOUNCED ON : 09.01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

**Crl.R.C.No.1326 of 2024
and
CRL M.P.No.11385 of 2024**

Mr.Abdul Samad

... Petitioner / Accused

Vs.

The State
Represented by its
State House Officer,
P5 M.K.B Nagar Police Station (L&O)
Chennai

... Respondent / Complainant

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C., to call for the records in connection with the order dated 06.04.2024 made in Crl.M.P.No.18192 of 2024 in C.C.No.5968 of 2024 by the learned X Metropolitan Magistrate at Egmore and set aside the same as illegal and improper.

For Petitioner : Mr.S.Kingston Jerold

For Respondent : Mr.A.Damodaran
Addl. Public Prosecutor



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ORDER

The Petitioner / Accused challenging the order dated 06.04.2024, passed in Crl.M.P.No.18192 of 2024, in C.C.No.5968 of 2024 by the learned X Metropolitan Magistrate at Egmore, has filed the present Revision. The petitioner was facing trial by the learned X Metropolitan Magistrate, Egmore, Chennai in C.C.No.5968 of 2024, for the offence under Sections 294(b), 323 and 506(i) of IPC.

2. Mr.S.Kingston Jerold, the learned counsel appearing for the petitioner would submit that the case projected against the petitioner is that the petitioner and the defacto complainant are neighbours. There is some dispute with regard to clearing of garbage in front of their house. It is alleged that the petitioner used to clear the garbage from his house to the neighbour home, the defacto complainant and there was constant dispute and fight over this. On 16.11.2021 at about 7.00 a.m., when the defacto complainant was about to go for his work in his two wheeler at that time, the petitioner said to have come and called him as, 'Item' and the same was questioned by the defacto complainant. The petitioner said to have used abusive words pulled the defacto complainant and assaulted him. This was witnessed by the defacto complainant's daughter, who present there and his wife, who came out hearing the noise, his brother-in-law and his wife, who



are staying in the first floor of the house also witnessed the fight.

Thereafter, the defacto complainant lodged a complaint to the respondent police, who registered the case, arrested the accused, conducted investigation. On completion of investigation listing 11 witness filed a charge sheet, statements and materials.

3. The learned counsel further submitted that during trial, the defacto complainant was examined as P.W1 and his daughter as P.W.2. During the evidence, the defacto complainant / P.W.1 deposed that the petitioner addressed his daughter by calling her Item and P.W.1 questioned the petitioner and thereafter, P.W.1 was assaulted. P.W.2, the defacto complainant's daughter, in her evidence confirms that on 16.11.2021, the petitioner called her as Item. This fact not in the complaint Ex.P1 and in the 161 statements of both witnesses, but P.W1 gives explanation that he had not mentioned calling his daughter as item, since it would affect his daughter's future. P.W.2 stated that in the year 2024, she is aged 18 and the occurrence taken place on 16.11.2021 while she was studying 11th Standard and she was a minor. Thereafter, the respondent Police filed a petition under Section 323 Cr.P.C., and the trial Court finding that when the occurrence taken place the victim girl was minor and the offence under Sections 11 and



12 of POCSO Act would get attracted and committed the case to Principal Sessions Court, Chennai. This is not legally sustainable. P.W.1 is employed in Hindu Press. P.W.1 was cross-examined by the petitioner, during cross-examination, he confirms in the Complaint, Ex.P1, the word, 'item' was addressed only against him and in his evidence, he admits the same. P.W.2 daughter of the defacto complainant confirms that her father given a complaint for addressing him as item and on 16.11.2021, after the incident she proceeded to school.

4. The learned counsel further submitted that L.W.3, is the defacto complainant's wife; L.W.4 Opposite House Resident; L.W.5 Brother-in-law of the defato complainant; L.W.6 Sister of the defato complainant, in their 161 statements they have not stated anything with regard to the petitioner calling or abusing P.W.2 as Item. It is an admitted fact that there were constant dispute with regard to clearing of garbage in front of their house between the petitioner and the defacto complainant and they were not in good terms. In such circumstances, addressing the word as 'Item' with sexual intent would not arise. The word, 'Item' according to the petitioner is addressed to the person, who planned sketch against the opponents and nothing



more. The lower Court giving a finding that word Item will be only against P.W.2 is not proper will prove be disasters and in each and every case, the rival party will tend to improvise their statement and give a different connotation for a normal fight manifesting and aggravating the offence to a serious one. In this case, the Investigating Officer recorded the statement of witnesses in detail and thereafter filed the final report. It is seen that there are cases against the petitioner as well as the defacto complainant. In fact, earlier, the petitioner on the assault committed by the defacto complainant took medical treatment. In such circumstances, imputing sexual intent for a normal usage of words and allowing the petition is not proper. The detailed cross-examination of P.W.1 would prove the evidence is with exaggeration and contradictions.

5. Mr.A.Damodaran, the learned Additional Public Prosecutor appearing for the State would submit that on the evidence of P.Ws.1 and 2, the respondent filed a petition under Section 323 Cr.P.C., the trial Court considered the explanation given by P.W.1 in not mentioning in the complaint about the word, 'Item', addressed towards his daughter. On 16.11.2021, at about 7.00 a.m., P.W.1 was leaving for his employment and P.W.2 was waiting for her school van,



at that time, the petitioner uttered the obscene word, 'item' against P.W.2, which was confirmed from the evidence of P.W.1 and P.W.2. He fairly submit that in the complaint and 161 statement the word item only refer to the defacto complainant. It might be an improvement but P.W.2 was a minor on the date of alleged occurrence and considering the evidence, the trial Court rightly found the offence under Sections 11 and 12 of POCSO Act get attracted, by a detailed and well reasoned order, committed the case to Court of Sessions. Hence, prayed for dismissal of the Revision.

6. I have heard the learned counsels appearing on either side and perused the materials available on record.

7. It is not in dispute that the petitioner and the defacto complainant are neighbours and there had been regular fight with regard to clearing of garbage in front of their house. There have been earlier complaints pending between them and the petitioner was assaulted and taken treatment for an earlier attack by the defacto complainant. On 16.11.2021, the alleged occurrence said to have taken place, at that time, it is projected that the petitioner called the defacto complainant / P.W.1 as item and he lodged a complaint. After the complaint, the petitioner was arrested, statement of witnesses recorded and final report filed. In this case, L.Ws.1 to 6 are projected



as eye-witnesses. L.W.1 defacto complainant examined himself as P.W.1; L.W.2 is his minor daughter. L.W.3 is the wife of L.W.1; L.W.4 a local resident residing in the opposite house; L.Ws.5 and 6 are residing in the first floor and they are brother-in-law and sister of the defacto complainant. L.Ws.1 to 4 in their 161 statements confirm that it is only against the defacto complainant the word, 'item' has been used. This word, 'item' cannot be taken in isolation given a different meaning latter.

8. It is an admitted fact that there is no cordial relationship between the petitioner and the defacto complainant. In such circumstances, imputing the word, 'item' with sexual intent would not arise. The usage of any abusive words with sexual intent is the *Sin quo non* to get attracted under Sections 11 and 12 of POCSO Act.

Any question which involves “sexual intent” shall be a question of fact as per Explanation to Sec.11 of POCSO Act. From the above factual position it cannot be now held the word, 'Item' used by the petitioner was with sexual intent. Further it is seen that in this case, the evidence of P.W.1 and P.W.2 is with contradictions. This being so, the lower Court straightway giving a finding that the word uttered is with sexual intent and the case is liable to be transferred to the Court of Sessions, is not proper. If such interpretations are given, the



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Intelligent Lawyers or motivated witnesses might take advantage of the Special Act, POCSO Act, in imputing different meaning to a word used out of context and there will be flooding of cases getting transferred invoking Section 323 to the Special Courts, which would defeat the purpose for which, the Special Acts and Special Courts are brought in and formed.

9. In view of the above factual position, the Criminal Revision is allowed and the order dated 06.04.2024, passed by the learned X Metropolitan Magistrate at Egmore in Crl.M.P.No.18192 of 2024 in C.C.No.5968 of 2024 is set aside. Consequently the proceedings in S.CNo.96 of 2024 pending on the file of the Principal Sessions Court, Chennai, is hereby withdrawn and closed. The case in C.C.No.5968 of 2024 is hereby restored to the file of X Metropolitan Magistrate at Egmore, who is to proceed with the trial and to dispose of C.C.No.5968 of 2024, on merits and in accordance with law. The connected miscellaneous Petition is closed.

09.01.2025

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

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To

- 1.The X Metropolitan Magistrate
Egmore, Chennai.
- 2.The Principal Sessions Judge,
Chennai,
3. The Inspector of Police /
State House Officer,
P5 M.K.B Nagar Police Station (L&O)
Chennai
4. The Public Prosecutor,
High Court, Chennai.



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M.NIRMAL KUMAR, J.

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Pre-Delivery Order made in

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