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Crl.R.C.No.497 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on : 17.12.2024

Orders Pronounced on : 02.01.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.497 of 2024

and

Crl.M.P.No.4733 of 2024

--

S.Ve.Shekar

.. Petitioner

Vs.

State Represented by
The Inspector of Police,
Cyber Crime Cell, Central Crime Branch,
No.132, Commissioner Office Building,
EVK Sampath Road, Vepery,
Periyamet, Chennai-600 007.

.. Respondent

Criminal Revision Case filed under Section 397 read with Section 401 Cr.P.C., praying to set aside the judgment in C.C.No.62 of 2019, dated 19.02.2024 passed by the Assistant Sessions Judge, Additional Special Court for trial of criminal cases related to MP's and MLA's of Tamil Nadu, Chennai-600 001 and acquit the petitioner herein against the charges under Sections 504, 509 of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002.

For petitioner : Mr.Venkatesh Mahadevan

For respondent: Mr.S.Vinoth Kumar, Govt. Advocate (Crl. Side)

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ORDER

Criminal Revision Case is filed praying to set aside the judgment in C.C.No.62 of 2019, dated 19.02.2024 passed by the Assistant Sessions Judge, Additional Special Court for trial of criminal cases related to MP's and MLA's of Tamil Nadu, Chennai-600 001 and acquit the petitioner herein against the charges under Sections 504, 509 of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002.

2. The respondent filed charge-sheet against the petitioner under Sections 504, 505(1)(c) and 509 IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002 and the same was taken cognizance of in C.C.No.62 of 2019.

3. It is the case of the prosecution that the petitioner had posted certain derogatory objectionable comment/message against women journalists and P.W.2, in his Facebook social media posting and such message posting was done with an intention to humiliate and destroy human values of feminine gender, in the media field and thereby, public peace and tranquillity was affected and therefore, the petitioner had committed the offence(s) under various provisions

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of the IPC and the Tamil Nadu Prohibition of Harassment of Women Act. The investigating officer had initially filed the final report before IIInd Metropolitan Magistrate, Egmore, Chennai and in view of the petitioner being a former Member of Legislative Assembly, representing Mylapore Constituency during the year 2006-2011, the case was thereafter transmitted to the Assistant Sessions Court, Additional Special Court for trial of Criminal cases related to the elected MPs and MLAs of Tamil Nadu, Chennai.

4. Learned counsel for the petitioner submitted that the trial Court did not notice that there are serious lapses in the investigation and the prosecution failed to prove the charges beyond all reasonable doubts. None of the prosecution witnesses, was able to clearly state even the basic facts regarding the aspect of when the alleged message was forwarded by the petitioner and as to when it was deleted. Further, the original forwarded message was never produced before the trial Court by the prosecution and as such, the contents were actually never seen by the trial Court. Moreover, the trial Court erred in relying on the screen-shot of the alleged forwarded message, for which, no certificate under Section 65-B of the Indian Evidence Act, which was produced by the prosecution, thereby rendering the alleged screen-shot inadmissible in evidence.



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5. Learned counsel for the petitioner further contended that the trial Court failed to note that the prosecution failed to establish the authenticity of the alleged screen-shot of the forwarded message through scientifically established means. The trial Court did not consider the factum of inconsistency and unreliable statements of the witnesses, which case serious and grave doubt on the case of the prosecution. The prosecution's failure to seize the electronic devices belonging to the petitioner, resulted in no direct evidence of the contents of the alleged message forwarded by the petitioner.

6. The learned counsel for the petitioner also contended that the trial Court had overlooked the important fact that the original author of the alleged message was not arrayed as that of the petitioner, even though the prosecution even at the very inception of receiving the complaint, was fully aware of the undeniable facts. Even though the petitioner tendered unconditional apology for having forwarded a message, the contents of the said message allegedly produced before the trial Court, as a screen-shot, had not been admitted by the petitioner and it is the duty of the prosecution to prove beyond reasonable doubt that the alleged scree-shot produced before the trial Court, was actually a screen-shot of the original message, which the prosecution did not prove.



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7. Learned counsel for the petitioner further stated that the trial Court did not notice that there are two private complaints in C.C.No.15 of 2023 and C.C.No.16 of 2023, which were withdrawn by the complainants by merely accepting the apology from the petitioner, thereby proving that the petitioner never had any criminal intention or mens-rea to commit any such offence much less the offences arrayed by the prosecution. None of the prosecution witnesses including the investigating officer, spoke about the petitioner, having any intention much less criminal intention in forwarding the alleged message.

8. Learned counsel for the petitioner further contended that the trial Court erred in relying on the decision of the Supreme Court reported in 2023 (4) SCC 1 (Kaushal Kishor Vs. State of U.P. and others), since neither the facts of the said case, nor the principles enunciated therein apply to the case of the petitioner, who neither delivered hate speech, nor had any criminal intention to defame anyone, much less the women in Press and Media. Lack of authentication of the alleged screen-shot of the message marked as Ex.P-5, unaccompanied by a Certificate under Section 65-B of the Indian Evidence Act, affects the case of the prosecution. Moreover, the inconsistent statement of the prosecution witnesses regarding crucial facts and details of the case, casts serious and irretrievable doubt on the case of the prosecution. Ultimately, the

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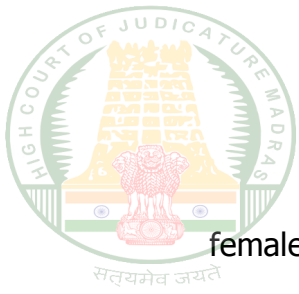
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learned counsel for the petitioner pleaded that the petitioner may be acquitted of all the charges framed against him.

9. Learned counsel for the petitioner also stated that Section 65-B of the Indian Evidence Act, had not been complied with and no proper certificate/authenticity certificate is filed as such. Learned counsel further contended that the incriminating circumstances were not put before the petitioner and no explanation in that regard has been obtained from him while he was questioned under Section 313 Cr.P.C.

10. Learned counsel for the petitioner further submitted that there is perversity in appreciation of evidence by the trial Court and non-compliance of the statutory provisions under Section 65-B of the Indian Evidence Act, vitiates the judgment passed by the trial Court. Therefore, he prayed that the judgment of conviction and sentence may be set aside and this revision petition may be allowed.

11. On the other hand, learned Government Advocate (Criminal Side) appearing for the respondent submitted that the revision petitioner, through Twitter, re-affirmed the reputation of P.W.2/de-facto complainant and other



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female journalists. Even on seeing the same, everyone raised question and even the journalists agitated against the petitioner in front of their house also and thereafter, the petitioner had also removed the Twitter message and tendered his apology, and therefore, though the petitioner has stated that he is not the author of Twitter message, whereas, he forwarded the same and tendered his apology. When once he had admitted that he forwarded the message to some other person and also during the cross-examination before P.W.2, the defence counsel had also put a question, which shows that the petitioner has accepted his posting in the media, but however, he only denied the authorship and tendered apology. The de-facto complainant did not accept that he had filed a complaint, based on which, a case was registered against the petitioner.

12. The learned Government Advocate (Criminal Side) further contended that by examining 7 witnesses on the side of prosecution, especially, P.Ws.1 to 3 have categorically stated about the forwarded message and even Ex.P-3 also clearly shows that the petitioner only even without reading the contents, forwarded the same, but he cannot state that he was not aware of the same. Without knowing the contents, one will not tender his apology. The cross-examination of P.W.2 being the victim itself, clearly shows that the petitioner is aware of the contents of the message posted in the social media. Therefore, in



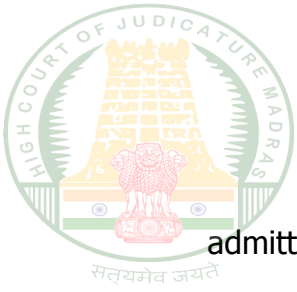
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the above circumstances, Ex.P-3 certificate is enough and therefore, the prosecution has proved its case beyond reasonable doubts and there is no perversity in appreciation of the evidence.

13. The learned Government Advocate (Criminal Side) further contended that the scope of the revision petition is very limited, and unless the Court finds that there is perversity in appreciation of the evidence or there is legal bar, the revisional Court may not interfere and even if the revisional Court finds that two views are possible, normally, the Court cannot interfere with the view taken by the trial Court. Therefore, in the above circumstances, there is no merit in the revision petition and the same is liable to be dismissed.

14. Heard both sides and perused the materials available on record.

15. A reading of the entire materials available on record and even the cross-examination of P.W.2, admittedly, the petitioner has forwarded the message in the Facebook, but according to the petitioner, it was only forwarded by him and somebody sent to him and without reading that, he just forwarded the message of some other person, but after seeing the message, he immediately removed the same. Ex.P-3 shows that the petitioner himself



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admitted that he forwarded the message, but without reading the same, he had forwarded the message, which is a matter of appreciation of evidence. A perusal of the entire cross-examination of P.W.2, it cannot be stated that the petitioner was not aware of the contents of the message. Knowing fully well and knowing the consequences only, he had forwarded the same. Since there was agitation against the contents, he had tendered apology and removed the message from Facebook.

16. However, considering the nature of the contents of the message, it is seen that the de-facto complainant is not ready to accept the apology. A reading of the evidence of P.Ws.1 to 3, especially the cross-examination of the petitioner, clearly shows that the petitioner had forwarded the Facebook message and he was well aware of the contents of the Facebook message, he also admitted that, after receiving the objection, it could be seen that it is unbelievable that after receiving certain response from the Facebook, the petitioner, without reading the contents, simply deleted his message and therefore, the petitioner was not aware of the contents and therefore, certificate under Section 65-B of the Indian Evidence Act regarding the original content from the electronic records, which is not necessary, however, the prosecution produced Ex.P-3 and on a reading of the cross-examination of P.W.2, it is clear that ExP-3 - certificate is sufficient and



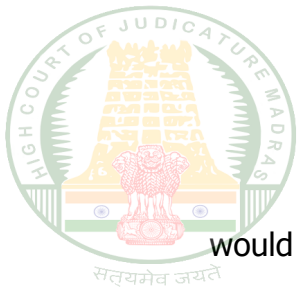
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therefore, when once the prosecution has proved that the petitioner sent the message in the Facebook, as stated above.

17. It clearly shows that it affects the reputation of P.W.2 and the contents of the message are only about P.W.2 and other journalists and even ultimately, who are depending on the same from the family members/superiors. Therefore, a thorough perusal and reading of the cross-examination of P.W.2 that the offence(s) against the petitioner, is made out and the prosecution also has proved its case beyond all reasonable doubts.

18. Further, a reading of the contents, in merely tendering the apology itself, is not sufficient. Further, according to P.W.2, the petitioner did not tender any unconditional apology directly from P.W.2 being the victim and he sent the apology in common.

19. A close reading of the evidence of P.W.2, the question was posed before P.W.2 that even now, the petitioner is ready to tender his apology individually from the petitioner. Mere tendering apology itself would not be sufficient. When once the contents are released and it is also seen by various persons, certainly, the image of the de-facto complainant and other journalists



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would be degraded and subsequent tendering apology will not remove the image from the public. Therefore, this is a fit case where the petitioner has to be convicted. Furthermore, on a reading of the entire materials from the complaint and taking into consideration the evidence of P.Ws.1 to 3 and also the documentary evidence, it is clearly proved that the petitioner had committed the offence(s) and there is no perversity in appreciation of the evidence and that there is no legal bar to take complaint on file.

20. The petitioner has not been posed a question regarding the incriminating circumstances culled out from the prosecution witnesses concerned. A reading of the proceedings under Section 313 Cr.P.C., it shows that the trial Court has posed all the incriminating materials before the petitioner and the petitioner also has understood all the incriminating materials posed before him and he had denied the same.

21. Therefore, in the above circumstances, the contention of the learned counsel for the petitioner regarding the incriminating materials had not been posed before him, which is not acceptable.

22. Further, the decisions of the Honourable Supreme Court relied on by

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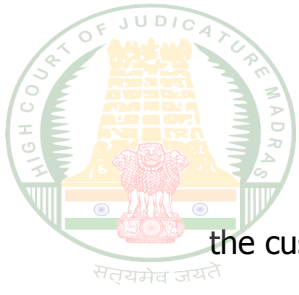


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the learned counsel for the petitioner, in 2022 (7) SCC 581 (Ravinder Singh Vs. State of Punjab) and 2024 SCC OnLine SC 3383 (Randeep Singh alias Rana and another Vs. State of Haryana and others) and the decision of this Court reported in 2024 SCC Online Madras 5188 (R.Thiagarajan Vs. State, rep. by the Inspector of Police, SPE, CBI, ACB), relied on by the learned counsel for the petitioner, are distinguishable on facts and the same are not applicable to the facts of the present case on hand.

23. Furthermore, all the incriminating materials put forth before the petitioner, which were denied by him. Hence, this Court does not find any reason to interfere with the impugned judgment of the trial Court. Like the appellate Court, the revisional Court need not re-appreciate the entire evidence independently. The scope of the revision petition is very limited while exercising the revisional jurisdiction and the revision Court has to see as to whether there is any legal bar or there is any perversity in appreciation of the evidence.

24. Hence, considering the scope and object of the revision and also taking into consideration the facts and circumstances of the case and on a thorough reading of the materials placed before the trial Court, this Court does not find any reason to interfere with the impugned judgment and therefore, the revision petition is dismissed. The conviction and sentence imposed on the petitioner by the trial Court, are confirmed. The trial Court is directed to secure



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the custody of the revision petitioner/accused to undergo the remaining period of sentence, if any. The respondent/Police shall not execute the sentence imposed on the revision petitioner/accused by the trial Court, which has now been confirmed by this Court, till the expiry of the limitation period for filing Special Leave Petition, if any, before the Supreme Court, for 90 days from today (02.01.2025).

Consequently, the miscellaneous petition is closed.

02.01.2025

CS

Office to note:

- 1) Registry is directed to upload the order copy by today (02.01.2025) itself.
- 2) Issue order copy today (2.1.2025)

To

1. The Inspector of Police,
Cyber Crime Cell, Central Crime Branch,
No.132, Commissioner Office Building,
EVK Sampath Road, Vepery,
Periyamet, Chennai-600 007.
2. The Assistant Sessions Judge,
Additional Special Court for
trial of criminal cases related to
MP's and MLA's of Tamil Nadu,
Chennai-600 001
3. The Section Officer, Criminal Section, High Court, Madras.
4. The Public Prosecutor, High Court, Madras.

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P.VELMURUGAN, J

CS

Pre-delivery Order in
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Order pronounced on
02.01.2025