2024:KER:89952

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR.JUSTICE MURALEE KRISHNA S.

FRIDAY, THE 29TH DAY OF NOVEMBER 2024 / 8TH AGRAHAYANA, 1946

CRL.REV.PET NO. 4 OF 2014

AGAINST THE JUDGMENT DATED 08.11.2013 IN CRA NO.326 OF 2011 OF ADDITIONAL SESSIONS JUDGE-I,MAVELIKKARA ARISING OUT OF THE JUDGMENT DATED 9.6.2011 IN CC NO.22 OF 2008 OF THE JUDICIAL MAGISTRATE OF FIRST CLASS, KAYAMKULAM

REVISION PETITIONER/APPELLANT/ACCUSED:

NIZAR,S/O ALIYARUKUNJU, KOTTAKKATTU VEEDU, CHERAVALLY MURI, KAYAMKULAM VILLAGE, ALAPPUZHA

BY ADVS.
SRI.B.S.SWATHI KUMAR
SRI.ASHISH MOHAN
SRI.A.K.RAJESH
SRI.REMYA MURALI

RESPONDENTS/RESPONDENT/COMPLAINANT:

1 **STATE OF KERALA REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM 682031**

2 **REGIONAL PASSPORT OFFICER PASSPORT OFFICE,PANAMPILLY NAGAR,KOCHI-682036 (ADDL.R2 IMPLEADED AS PER ORDER DATED 16/07/2018 IN CRL.M.A.4037/2018 IN CRL.R.P.4/2014)**

BY ADV SRI.SUVIN R.MENON, CGC
BY SRI.M.C.ASHI, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 22.11.2024, THE COURT ON 29.11.2024 PASSED THE FOLLOWING:

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MURALEE KRISHNA S., J.

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CRL.REV.PET. No. 4 of 2014

Dated this the 29th day of November, 2024

O R D E R

The revision petitioner was the accused in C.C No.22 of 2008 on the file of the Judicial First Class Magistrate Court, Kayamkulam. He was convicted for the offences under Sections 323 and 354 of the Indian Penal Code ('IPC', in short) and sentenced to undergo simple imprisonment for one month and to pay fine of Rs.1,000/- under Section 323 of IPC and to undergo simple imprisonment for three months and to pay fine of Rs.1,000/- under Section 354 of IPC and in default of payment of fine to undergo simple imprisonment for one month each.

2. The appeal preferred by the petitioner was dismissed as per the judgment dated 8.11 2013 in Crl A No.326 of 2011 by the Additional Sessions Court-I, Mavelikkara.

3. Before the Trial Court, from the side of prosecution PWs 1 to 6 were examined and Exts P1 to P5 documents were marked.

On closing the evidence of the prosecution, the petitioner was examined under Section 313(1)(b) of the Code of Criminal Procedure. He denied all the incriminating circumstances brought out against him in the prosecution evidence. DW1 was examined and Exts D1 to D12 documents were marked from the side of the petitioner.

4. The prosecution case, in brief, is that the petitioner was the President of Parent Teachers Association of a U.P School. PW1 was the Headmistress and Parent Teachers Association Convener of the school. They were not in good terms due to some issues in the Parent Teachers Association. On 22.11.2007 at 3.30 p.m while the meeting of the Parent Teachers Association was going on, the petitioner uttered obscene words against PW1 and from her hands snatched a written motion brought by her to oust the petitioner from the association. He outraged her modesty by caught holding her both hands and pulling her towards his body. He slapped on her face and caused injury below her nose.

5. After considering the evidence on record in detail and hearing the learned Prosecutor and the defence counsel, the Trial

Court held that the petitioner voluntarily caused hurt to PW1 by slapping on her face and also outraged her modesty by caught holding her hand and pulling her towards his body.

6. The Appellate Court also upheld the said finding of the Trial Court and confirmed the conviction and sentence.

7. Heard the learned counsel appearing for the petitioner and the learned Public Prosecutor.

8. The learned counsel for the petitioner would submit that the evidence of PW1 regarding the injury caused to her is not tallying with that noted in Ext P2 wound certificate. From Exts D1 to D12 documents produced in defence evidence, it is evident that the petitioner had filed complaints against the Management of the School and hence the Management has an axe to grind against him. PW1 acted as a tool in the hands of the Management.

9. On the other hand, the learned Public Prosecutor argued that the evidence of PW1 is corroborated by the evidence of PWs 2 and 3-the eye witnesses. The contradiction pointed out in the evidence of PW1 with that of Ext P2 wound certificate is not material.

10. PW1 is the injured, PW2 is a member of the Parent Teachers Association who was later selected as President of the Association and PW3 is a teacher of the school. From the evidence of PWs 1 to 3, it is evident that the incident was occurred on 22.11.2007 at 3.30 p.m, while a Parent Teachers Association meeting was going on in the school. It is also evident from the depositions that PW1 was about to move a no-confidence motion against the petitioner with a view to oust him from the Parent Teachers Association and it was at that time the petitioner forcefully snatched those papers from the hands of PW1 and slapped on her face. The depositions of PWs 1 to 3 regarding the injury caused to PW1 is fortified by Ext P2 wound certificate issued by PW4, the doctor who treated her, which would show that there was a corresponding injury on the lip of PW1. It is true that some complaints were previously filed by the petitioner against the Management of the school. But there is no evidence to say that PW1 had any enmity towards the petitioner on that count.

11. The trial court after a detailed analysis held that the evidence tendered by PWs 1 to 3 regarding the hurt caused to

PW1 by the petitioner could be believed. The evidence concerning the material particulars to attract the offence under Section 323 of IPC is consistent. The Appellate Court also re-appreciated the evidence and concurred with the finding of the trial court. I find no reason to interfere with that finding arrived at by the Trial Court as well as the Appellate Court. Therefore, the conviction of the petitioner for the offence under Section 323 of IPC is confirmed.

12. By relying on the judgment of this Court in **Vijayan v. State of Kerala [2021 (1) KLT SN 4],** the learned counsel for the petitioner would further submit that the ingredients of the offence under Section 354 of IPC is not made out in this case. The learned Public Prosecutor countered this argument by submitting that the intention of the petitioner to outrage the modesty of PW1 can be gathered from his actions.

13. Section 354 of IPC as it stood on the date of commission of the offence in this case reads as under:

> "Whoever assaults or uses criminal force to any woman, intending to outrage or knowing it to be likely that he will thereby outrage her modesty, shall be punished with imprisonment of either description for a term which may extend to two years or with fine or with both".

14. A reading of Section 354 of IPC would make it clear that in order to attract the offence under that Section, (i) the assault must be on a woman, (ii) the petitioner must have used criminal force on her, and (iii) the criminal force must have been used on the woman intending thereby to outrage her modesty.

15. The Apex Court in **Rupan Deol Bajaj v. K.P.S Gill [1995 (2) KLT 830: AIR 1996 SCC 309]** in paragraph 16 held thus:

> "16. It is undoubtedly correct that if intention or knowledge is one of the ingredients of any offence, it has got to be proved like other ingredients for convicting a person. But, it is also equally true that those ingredients being states of mind may not be proved by direct evidence and may have to be inferred from the attending circumstances of a given case. Since, however, in the instant case we are only at the incipient stage we have to ascertain, only prima facie, whether Mr. Gill by slapping Mrs. Bajaj on her posterior, in the background detailed by her in the FIR, intended to outrage or knew it to be likely that he would thereby outrage her modesty, which is one of the essential ingredients of Section 354 IPC. The sequence of events which we have detailed earlier indicates that the slapping was the finale to the earlier overtures of Mr. Gill, which considered together, persuade us to hold that he had the requisite culpable intention. Even if we had presumed he had no such intention he must be attributed with such knowledge, as the alleged act was committed by him in the presence of a gathering

> comprising the elite of the society - as the names and designations of the people given in the FIR indicate. While on this point we may also mention that there is nothing in the FIR to indicate, even remotely, that the indecent act was committed by Mr. Gill, accidentally or by mistake or it was a slip. For the reasons aforesaid, it must also be said that, - apart from the offence under Section 354 IPC - an offence under Section 509 IPC has been made out on the allegations contained in the FIR as the words used and gestures made by Mr. Gill were intended to insult the modesty of Mrs. Bajaj".

16. In **K.P.S Gill** (supra), the apex court analysed the attending circumstances of commission of the offence to hold that the accused had the required intention or at least knowledge of the consequences of his act.

17. The term modesty is not defined in IPC. In **K.P.S Gill** (supra), the apex court held thus:

> "14. Since the word 'modesty' has not been defined in the Indian Penal Code we may profitably look into its dictionary meaning. According to Shorter Oxford English Dictionary (Third Edition) modesty is the quality of being modest and in relation to woman means "womanly propriety of behavior; scrupulous chastity of thought, speech and conduct". The word 'modest' in relation to woman is defined in the above dictionary as "decorous in manner and conduct; not forward or lewd; shamefast". Webster's Third New International Dictionary of the English language defines modesty as "freedom from coarseness, indelicacy or indecency;

a regard for propriety, in dress, speech or conduct". In the Oxford English Dictionary (1933 Ed) the meaning of the word 'modesty' is given as "womanly propriety of behavior; scrupulous chastity of thought, speech and conduct (in man or woman); reserve or sense of shame proceeding from instinctive aversion to impure or coarse suggestions".

18. In **State of Punjab v. Major Singh (AIR 1967 SC 63)**, the Apex Court held that "young or old, intelligent or imbecile, awake or sleeping the woman possesses a modesty capable of being outraged. The culpable intention of the accused is the crux of the matter. Though the reaction of the woman concerned is very relevant, its absence is not always decisive. Eg. When the accused with a corrupt mind stealthily touches the flesh of a sleeping woman, he commits the offence". In the same decision, the court further held that "The test of the outrage of modesty must, therefore, be whether a reasonable man will think that the act of the offender was intended to or was known to be likely to outrage the modesty of the woman. In considering the question, he must imagine the woman to be a reasonable woman and keep in view all circumstances concerning her, such as, her station and way of life and the known notions of modesty of such

a woman".

19. This Court in **State of Kerala v. Hamsa [1988 (2) KLT 89]** at paragraph 5 held thus:

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> "Though the word "modesty" is not defined in the Penal Code, it has relation to the sense of propriety of behaviour in relation to a woman against whom the offence is committed. In the Oxford English Dictionary one of the meanings given for the word "modesty" is "womanly propriety of behaviour". What the legislature had in mind when it used the word modesty in S.354 and 509 of the Penal Code was protection of an attribute which is peculiar to woman, as a virtue which attaches to a female on account of her sex. Modesty is the attribute of female sex and she possesses it irrespective of her age. The two offences were created not only in the interest of the woman concerned, but in the interest of public morality as well. The question of infringing the modesty of a woman would of course depend upon the customs and habits of the people. Acts which are outrageous to morality would be outrageous to modesty of women. No particular yardstick of universal application can be made for measuring the amplitude of modesty of woman, as it may vary from country to country or society to society."

20. In **Vijayan v. State of Kerala [2021 (1) KLT SN 4],** this court held that "the act will amount to outraging of modesty if it is such which could be perceived as one capable of shocking

sense of decency of a woman. Modesty of a woman is her sex, it is a virtue which attaches to a female owing to her sex. The offence of outraging the modesty is committed when a person assaults or uses criminal force to a woman intending to outrage or knowing it to be likely that he will thereby outrage her modesty."

21. The ultimate test for ascertaining whether modesty has been outraged, is the action of the offender such as could be perceived as one which is capable of shocking the sense of decency of a woman. When analysing the acts of the petitioner in this case, it could be seen that it was on the occasion of a no-confidence motion about to be moved by the PW1 against the petitioner in a Parent Teachers Association Meeting, the incident took place. Naturally, it would be an act in a heat of passion committed by the petitioner. Regarding the said act of the petitioner the evidence of PWs 1 to 3 is not consistent. While PW1 says that the petitioner pulled her towards his body, PWs 2 and 3 gave a different version. They did not depose that the petitioner caught hold the hands of PW1 and pulled her. When there was dispute between PW1 and the petitioner in connection with

expelling him from the Parent Teachers Association, it is difficult to believe that the petitioner assaulted PW1 with an intention to outrage her modesty. The necessary ingredients contemplated under Section 354 of IPC are not brought out in evidence in this case. Both the Trial Court and the Appellate Court erroneously appreciated the evidence on this point and entered a finding that the petitioner committed the offence punishable under Section 354 of IPC. When the judgment of conviction and sentence suffers from material illegality, it is within the domain of revisional Court to get it set aside. Therefore, the conviction of the petitioner under Section 354 of IPC and the consequent sentence imposed on him by the trial court which has been confirmed in the appeal stands set aside.

22. The point now is whether any interference is needed on the sentence imposed on the petitioner for the offence under Section 323 of IPC. The petitioner was the President of the Parent Teachers Association of the School wherein the incident occurred. The incident was in the year 2007. The petitioner has no criminal antecedents. Considering these aspects, I am of the view that

petitioner is entitled for a lenient treatment in the matter of sentence.

Hence, the sentence imposed on the petitioner by the Trial Court which is confirmed in the appeal for the offence under Section 323 of IPC is converted to one of imprisonment till the rising of Court and to pay compensation of Rs.10,000/- to PW1. If the compensation is not paid, the petitioner shall undergo simple imprisonment for a period of one month. He shall appear before the trial court to undergo the modified sentence hereby imposed, on or before 30.12.2024.

Sd/-

MURALEE KRISHNA S., JUDGE

sks/25.11.2024