

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 21.12.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

CRL.O.P.No.27987 of 2009

and

M.P.Nos.1 and 2 of 2009

1.E.Babyammal

2.E.Shankar

... Petitioners/Accused

- Vs -

The Sub-Inspector of Police,
D-3, Ice House Police Station,
Chennai District, Tamil Nadu,
In Crime No.927/2005
dated 15.07.2005

... Respondent/Complainant

Prayer : Criminal Original Petition is filed under Section 482 Cr.P.C. to call for the records in C.C.No.20950 of 2005, on the file of XIII Metropolitan Magistrate, Egmore, Chennai-600 008 and quash the same.

For Petitioners : Mr.R.C.Paul Kanakaraj

For Respondent : Mr.V.M.R.Rajentren
Additional Public Prosecutor

O R D E R

Invoking the inherent jurisdiction of this Court under Section 482 of Cr.P.C., this petition is filed by the petitioners to quash the criminal proceedings of the case in C.C.No.20950 of 2005 pending trial as against them on the file of the XIII Metropolitan Magistrate, Egmore, Chennai.

2. Heard Mr.R.C.Paul Kanakaraj, learned counsel for the petitioners and Mr.V.M.R.Rajentren, learned Additional Public Prosecutor appearing for the respondent/police.

3. The petitioners have been facing the charges under Sections 451, 354, 294(b) and 506(ii) of I.P.C. and also under Section 4 of the the Tamil Nadu Prohibition of Harassment of Woman Act, 1998.

4. It is revealed from the records that based on the complaint lodged by one E.Babyammal, the respondent happened to register a case in Crime No.927 of 2005 as against the petitioners alleging that they have committed the offences punishable under Sections 451, 354, 294(b) and 506(ii) of I.P.C., r/w. Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998.

5. As per the case of prosecution the listed witness No.6, Solomon S/o. Thomas came to be in occupation of a portion of the house belonging to the 1st petitioner Babyammal which is situated at No.30, Dr.Natesan Road, Triplicane, Chennai-5 for preparing sweets for selling in his sweet stall under the name and style of Sangeetha Sweet Stall. The 2nd petitioner is none other than the son of the 1st petitioner Babyammal.

6. Since the smoke emanated from the kitchen spreaded over the house of complainant Srividhya which is located proximity to the house of the petitioners, she had lodged a complaint before the Pollution Control Board. On receipt of the complaint, the officials from the Pollution Control Board came to the house of Babyammal and warned LW 6 Solomon and they had also instructed him to vacate the rented premises.

7. That on 11.07.2005, at about 10.30 a.m. when LW 6 Solomon was vacating the premises, the petitioners 1 and 2 had rushed to the house of the complainant Srividhya and abused her with filthy language and during the course of verbal altercation they had pulled her hand and pushed her down under the impression that their tenant Solomon (LW6) was made to vacate the rented premises because of the complaint lodged by the complainant with the Pollution Control Board. Soon after the occurrence, the complainant had lodged a complaint with respondent/police. As aforesated a case in Crime No.927 of 2005 came to be registered against the petitioners.

8. Mr.R.C.Paul Kanakaraj, learned counsel for the petitioners has contended that the complainant had not made out a prima facie case to maintain the charges as alleged in the charge sheet. He has added that the complainant Srividhya with an illegal and ulterior motive had lodged the complaint as against the petitioners which could be proved from the police complaint dated 27.06.2005, 13.07.2005 and 15.07.2005 lodged by the petitioners and further from the Civil Suit filed by the petitioners in O.S.No.3980 of 2005 as well as from the interlocutory application in I.A.No.12028 of 2005 which was filed by the petitioner on the file of the VII Assistant Judge, City Civil Court, Chennai on 29.06.2005.

9. According to Mr.R.C.Paul Kanakaraj, the complainant was having previous enmity as against the petitioners over the closure of a passage and windows on the northern side of the petitioners property. While advancing his arguments, Mr.R.C.Paul Kanakaraj, has invited the attention of this Court to the statements of the witnesses recorded by the Investigating Officer under Section 161(3) of Cr.P.C. He has further contended that on a careful perusal of the statements of the listed witnesses it could be understood that no adequate grounds were available to proceed against the petitioners under Sections 451, 354, 294(b) and 506(ii) of I.P.C r/w. Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998.

10. On the other hand Mr.V.M.R.Rajentren, learned Additional Public Prosecutor has submitted that after the completion of investigation, the respondent/police had filed the final report as against the petitioners and that the final report was also taken on the file of the learned XIII Metropolitan Magistrate, Egmore, Chennai in C.C.No.20950 of 2005 and the learned Judicial Magistrate had taken cognizance of the offences under Sections 451, 354, 294(b) and 506 (ii) of IPC r/w. Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998. He has also submitted that the trial was yet to be commenced and it was the duty of the prosecuting agency to place the prosecution witnesses before the trial court and to prove the charges levelled against the petitioner to the satisfaction of the trial court to maintain the conviction on the petitioner. He would further submit that it is the premature stage to file this petition for quashing the charges levelled against the petitioners before the commencement of the trial. He therefore, has submitted that let the trial be commenced and continued and the prosecuting agency be given opportunity to prove the charges as levelled against the petitioners by examining the prosecution witnesses and therefore he has urged to dismiss this petition at the threshold.

11. The language of Section 482 Cr.P.C., is clearly resembles the language of Section 151 of the Code of Civil Procedure. The provisions of Section 482 does not confer any new powers on the High Court. It only saves such inherent powers which the Court is possessed before the enactment of the Court. Section 482 envisages three circumstances, in which, the inherent jurisdiction may be exercised.

'1) The power is not to be resorted to if there is specific provision in the Code for the redress of the grievance of an aggrieved party.

2) It should be exercised very sparingly to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

3) It should not be exercised as against the express bar of the law engrafted in any other provision of the code.''

12. The main intention of the legislators to enact this Section is to secure the ends of justice and to prevent abuse of the process of any Court.

13. On coming to the instant case on hand, the complainant Srividhya has stated in the complaint that on 11.07.2005, at about 10.30 p.m., on account of previous enmity, the petitioners 1 and 2 had trespassed into her house and abused with filthy language and they had also pulled her hand and pushed her down.

14. At the first instance, this Court would like to place it on record that the specific overt act of the petitioners has not been individually stated by the complainant. Secondly, from the charge sheet laid by the respondent/police, this Court is able to understand that as nearly as 10 witnesses were listed by the prosecuting agency.

15. LW2 Bakthavatchala Raju is the father of the complainant Srividhya. In his statement before the Investigating Officer he has stated that he came to see his daughter(LW1) on the night of 10.07.2005 and since it was getting late, he stayed in his daughter's house at night. On the next day morning at about 10 a.m., when he was taking bath, he happened to hear sound from outside. After taking bath, when he came out, he was informed that the petitioners had pushed her daughter down. From his statement, it is inferred that he had not seen the occurrence directly.

16. LW3 (Nasar Ali) is residing at Door No.29. According to him, due to previous enmity, the petitioners had abused the complainant and pushed her down.

17. LW4 (Renuka) says that she is the friend of the complainant, and at about 11 a.m., when she came to the house of the complainant, the petitioners came there and abused her with filthy language and attempted to assault her. On seeing this, she had intervened and taken the complainant inside her house.

18. LW5 (Mrs.Suhasini) is none other than the sister-in-law of the complainant. She says that the petitioners had abused her in filthy language and pushed her down and thereafter, she had taken her inside the house.

19. LW6 is the tenant of the petitioners and as aforestated she had taken a portion of the petitioners house to use it as a kitchen for preparing sweets for his sweet stall which was running under the name and style of Sangeetha Sweet Stall.

20. LW7 is his brother. Both of them have stated that there was only verbal altercation between the petitioners and the complainant and according to them, the petitioners had not assaulted the complainant. LWS 8 and 9 are the mahazar witnesses.

21. On considering the statements of the listed witnesses which were recorded by the Investigating Officer under Section 161(3) of Cr,P,C., this Court finds that no prima facie case is made out to put the petitioners in the dock to face the charges. Even if the trial of the case is allowed to continue, the chance of conviction of the petitioners is remote and therefore, in order to save the precious time of the Court as well as to prevent the petitioners from facing the hurdle of trial, this Court finds that it is a fit case to be quashed.

22. Section 451 of I.P.C. envisages House-trespass in order to commit offence punishable with imprisonment.

'The essential ingredient of the offence of house-trespass under Section 451 is the dominant intention of the accused to be considered on the facts of each case. If the dominant intention was to make the entry peacefully no offence of criminal trespass would be made out. If any offence is actually committed after entry is made or during its course, though it was not part of the intent, the person committing that offence would be guilty of it. In each case facts will have to be ascertained first and on the basis of those facts the court will have to adjudicate whether the dominant intent was merely to make entry peacefully or to commit some offence.'

23. On coming to the instant case on hand, the dominant intention of the petitioners to make the house trespass has not been disclosed or made out in the complaint lodged by the complainant. Even the statement of the witnesses are also not cogent and convincing.

24. Secondly, as observed by this Court in 2005 MLJ (Cr1.) 968 Assaulting a woman alone will not constitute an offence under Section 354. The accusation, assaulting the victim in order to outrage her modesty, has to be proved. Virtually the word 'Modesty' has not been defined in the I.P.C. To decide whether modesty has been outraged is a criminal act of the offender that could be perceived and whether it is capable of shocking the sense of decency of the woman. This principle is laid down by the Apex Court in Mrs.Rupan Deol Bajaj vs. Kanwar Pal Singh Gill, AIR 1996 SC 309.

25. As observed by the Apex Court in AIR 2004 SC 1497 (case law) ''In order to attract punishment under Section 354 of I.P.C., essential ingredients are very much essential : (1) the person assaulted should be a woman and (2) the accused should have used criminal act tending to outrage her modesty. The reaction of woman is relevant but its absence is not.''

26. On coming to the instant case on hand, it is not made out by the prosecuting agency in the charge that the petitioners had used the criminal act tending to outrage the modesty of the complainant.

27. Thirdly, Section 294 of IPC prohibits performance of acts, songs and utterances of obscenity in public places causing annoyance to others. Section 294 enacts :

'' Whoever, to the annoyance of others -
(a) does any obscene act in any public place; or
(b) sings, recites or utters any obscene song, ballad or words, in or near public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or both.''

28. Both clauses viz., (a) and (b) conveys that the obscene act or utterance of words must be taken place in public place. Insofar as the present case is concerned, after gaining entry in to the house of the complainant it is alleged that the petitioner had abused the complainant with filthy language. Since the alleged act is said to have been taken place inside the house of the complainant, the provisions of Section 294 (b) would not attract.

29. Fourthly, Section 506(ii) is concerned, the threat which is said to have been relating to cause death or grievous hurt. In the given case on hand, it is alleged in the complaint lodged by the complainant that if any information is given to police, they would kill the total members of the family. In this connection, this Court would like to say that no witness has spoken to about the criminal intimidation said to have been made by the petitioners and therefore, the alleged charge under Section 506(ii) would not attract in this case.

30. On coming to Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998, the term ''Harassment'' is defined under clause(a) of Section 2 of the act, as under:

''the term ''harassment'' means any indecent conduct or act by a man which causes or is likely to cause intimidation, fear, shame or embarrassment,

including abusing or causing hurt or nuisance or assault or use of force;''

31. Section 4 of the act enacts that :

''4. Penalty for [harassment of woman].- Whoever commits participates in or abets [harassment of woman] in or within the precincts of any educational institution, temple or other place of worship, bus stop, road, railway station, cinema theatre, park, beach, place of festival, public service vehicle or vessel or any other place shall be punished with imprisonment for a term which may extend to [three years and] with fine which shall not be less than ten thousand rupees.''

32. Insofar as this section is concerned, the alleged act of harassment of woman must have been taken place in or within the precincts of any educational institution, temple or other place of worship, bus stop, road, railway station, cinema theatre, park, beach, place of festival, public service vehicle or vessel or any other place. As per the case of prosecution, the alleged act is said to have been taken place inside the house of the complainant.

33. It is significant to note here that none of the witnesses has spoken to about the act of harassment. Therefore, Section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998 also would not attract in this case.

34. Keeping in view of the above fact, this Court is of considered view that the criminal proceedings in C.C.No.20950 of 2005 pending against the petitioners on the file of the XIII Metropolitan Magistrate, Egmore, Chennai are liable to be quashed.

35. In the result, this Criminal Original Petition is allowed and the criminal proceedings in C.C.No.20950 of 2005 pending against the petitioners on the file of the XIII Metropolitan Magistrate, Egmore, Chennai are quashed. Consequently connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS VI)

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Sub Assistant Registrar

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To

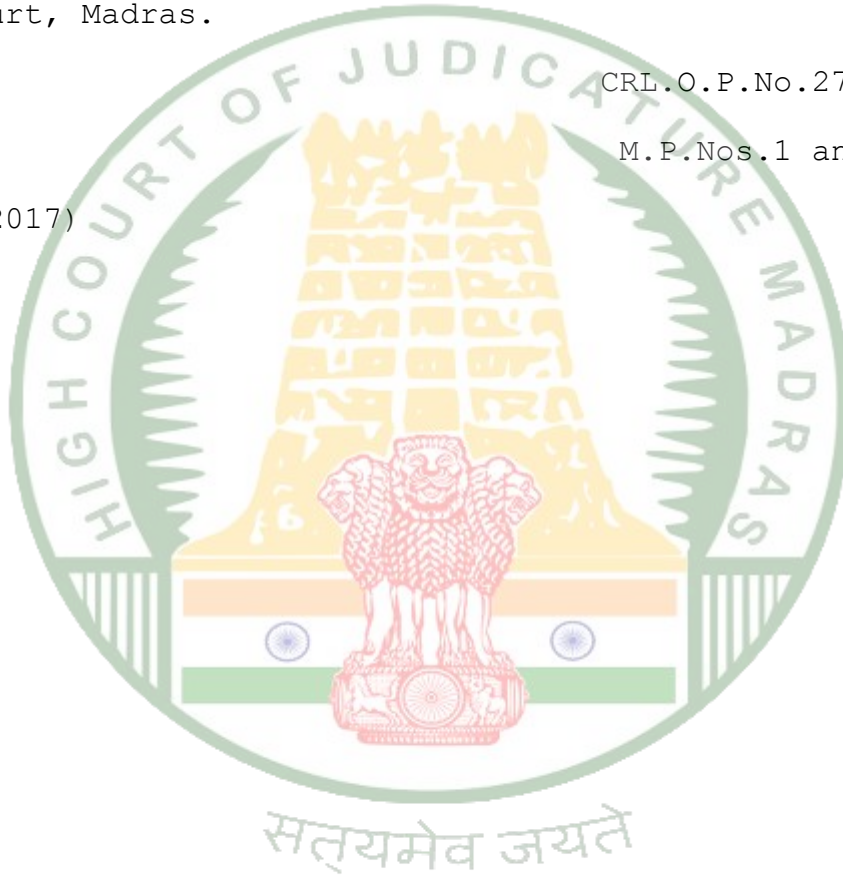
1.The XIII Metropolitan Magistrate,
Egmore,
Chennai-600 008

2.The Sub-Inspector of Police,
D-3, Ice House Police Station,
Chennai District, Tamil Nadu,

3.The Public Prosecutor,
High Court, Madras.

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