



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.06.2016

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THE HON'BLE DR.JUSTICE S.VIMALA

Crl.O.P.(MD) No.8568 of 2016

1. Kannan
 2. A.Raja
 3. Santhanamoorthi ... Petitioners/A1 to A3
- vs-
1. State Rep. by
The Inspector of Police,
Kayathar Police Station,
Tuticorin District.
(Crime No.205/2016) ... 1st Respondent/Complainant
 2. Ramesh ... 2nd Respondent/Defacto Complainant

Prayer: Petition filed under Section 482 of Code of Criminal Procedure to call for the records in connection with the Crime No.205 of 2016 on the file of the 1st respondent police and quash the same.

For Petitioner	:	Mr.M.Veilkaniraju
For R1	:	Mr.A.P.Balasubramani Govt. Advocate (Crl.Side)
For R2	:	Mr.P.Murugan

O R D E R

The petitioners, who are accused in Crime No.205 of 2016, pending on the file of the 1st respondent police, seek to quash the said case. The 2nd respondent is the defacto complainant.

2. It is seen that the case in Crime No.205 of 2016 has been registered by the Kayathar Police for the alleged offences under Sections 294(b), 323 and 506(2) IPC.

Gist of the complaint:

i) The defacto complainant/R2 by name Ramesh has alleged in the complaint that on 20.05.2016 at 10.45hrs, when he was standing in front of Narayanasamy Temple, the accused persons are stated to have abused him in filthy language and attacked him with hands.

ii) Refusal of the complaint would go to show that the allegations are vague and it is not specific with reference to the



place at which he was beaten and there is no mention of the nature of injury sustained by the defacto complainant. It is a settled law that mere threatening words used by the accused would not attract for an offence under Section 506(ii) IPC, as it would amount to criminal intimidation.

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3. Learned counsel for the petitioners/accused would submit that the petitioners and the defacto complainant are relatives, residing in the same locality and they have decided to settle their issues out of Court amicably; that continuation of investigation is a waste of time and therefore, the case must be quashed.

4. A joint memo of compromise dated 01.06.2016 entered into between the complainant and the accused has been filed by the parties and the petitioners/accused and the second respondent are personally present before this Court; their identifications were also verified by this Court, in addition to the confirmation of the identity of the parties by the learned Government Advocate (Crl.Side) through the respondent Police, namely, M.Mani, Sub-Inspector of Police, Kayathar Police Station. Pursuant to the compromise, the second respondent has agreed to withdraw the case in Crime No.205 of 2016 pending on the file of the first respondent. The parties have stated that they will not indulge in any such activities detrimental to their own personal interest and the interest of the society and their statement is recorded.

5. Learned counsel for the petitioner has submitted that in the ends of justice and in order to avoid the misuse of the process of law, the prosecution must be quashed.

6. Per contra, learned Government Advocate (Crl.Side) would contend that there is an embargo under Section 320 (9) Cr.P.C., under which no offence shall be compounded except as provided by the said Section and therefore, these proceedings cannot be quashed.

7. Whether a criminal proceedings or the First Information Report or complaint filed under Section 498(A) can be quashed under Section 482 Cr.P.C., despite an embargo under Section 320 (9) Cr.P.C., which specifically states "No offence shall be compounded except as provided by this Section".

7a. In the case of Madhu Limayi vs. State of Maharashtra 1977 (4) SCC 551, it was held that power under Section 482 Cr.P.C., should not be exercised when there is an express bar in some other provisions of the Code.

<https://hcservices.ecourts.gov.in/hcservices> 71. The Court in B.S.Joshi's case held that the High Court can quash the proceedings under Section 482 Cr.P.C., if it comes to the conclusion that ends of justice so requires, i.e. there would



be almost no chance of conviction. Thus, B.S.Joshi's case provided a creative solution for quashing of proceedings under Section 482 Cr.P.C.

7c. Invoking the doctrine of judicial restraint, it was held in the case of Divisional Manager, Aravali Golf Club and another vs. Chandar Hass and another, JT 2008 (3) SCC 221 that Section 482 Cr.P.C., restricts the power of the Court and it does not permit the Court to ordinarily encroach into the legislative or executive domain.

7d. Section 482 Cr.P.C., deals with saving of inherent power of the High Court, the Hon'ble Supreme Court, after referring the decision in which there was an observation that power under Section 482 Cr.P.C., cannot be exercised to do something, which is expressly barred, held that those judgments cannot be read as Euclids Formula and that judgments of a Court cannot be read mechanically and like a Euclid Theorem. It was pointed out that in rare and exceptional cases, even a departure can be made from the principle laid down. In other words, it was pointed out that judicial activism can be resorted to by the Court where the situation forcefully requires it in the interest of country or society.

8. Even though the compromise arrived at between the parties cannot be entertained by this Court, as the offences under Sections 294(b) and 506(ii) IPC are non-compoundable offences, still, in consequence of the amicable settlement, there is no possibility of the defacto complainant giving evidence against the accused persons and the witnesses would become hostile and ultimately, this case will not end in any conviction. Therefore, the continuation of criminal case will be an abuse of the process of Court.

9. When such a situation arose in similarly placed matters in **Crl.O.P. (MD) Nos.406, 530 and 864 of 2016 (Prabu and others vs. State Rep. By The Inspector of Police and others), decided on 28.01.2016**, this Court considered the various decisions rendered by the Hon'ble Supreme Court in this regard in several cases, namely, **Gian Singh vs. State of Punjab and another [(2012) 10 SCC 303]**, **B.S.Joshi vs. State of Haryana [(2003) 4 SCC 675]**, **Nikhil Merchant vs. CBI [(2008) 9 SCC 677]**, **Narinder Singh and others vs. State of Punjab and another [(2014) 6 SCC 466]** and **State of Madhya Pradesh vs. Manish and others [(2015) 8 SCC 307]** and observed as under:

"11..... As held by the Apex Court, insofar the offences arising out of matrimonial dispute, relating to dowry or the family disputes where the wrong is basically private or personal in nature, are concerned, the possibility of conviction is remote and bleak, in case the



parties resolve their entire disputes amicably among themselves.....".

10. Hence, considering the nature of allegations and in view of the joint memo of compromise dated 01.06.2016, it can safely be said that no useful purpose would be served in keeping the matter pending.

In the result, this Criminal Original Petition is allowed in consequence of the compromise between the parties and the entire proceedings in Crime No.205 of 2016 on the file of the 1st respondent police are hereby quashed against the petitioners/accused.

Sd/
Assistant Registrar

/True copy/

Sub Assistant Registrar

Xerox copy of Compromise Memo enclosed herewith:

To:

1. The Inspector of Police,
Kayathar Police Station,
Tuticorin District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

SDR/PEK/29.07.2016/4P/3C

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