

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.11.2017

CORAM

THE HONOURABLE MR. JUSTICE M.S.RAMESH

CrI.O.P.No.7304 of 2017
C.M.P.Nos.5288 & 5289 of 2017

R.Elangovan ... Petitioner

V.

1.State by
The Inspector of Police
Edapaddi Police Station,
Salem District.

2.N.Arumugam ... Respondent

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. to quash the proceedings insofar as the petitioner is concerned in C.C.No.15 of 2016 on the file of the learned Judicial Magistrate No.II, Sankagiri.

For Petitioner : Mr.A.Esakkiappan
For Respondent-1 : Mr.C.Iyyapparaj, APP

ORDER

This Criminal Original Petition has been filed by the petitioner challenging the proceedings in C.C.No.15 of 2016 on the file of the learned Judicial Magistrate No.II, Sankagiri and to quash the same.

2. Heard Mr.A.Esakkiappan, learned counsel for the petitioner as well as Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing on behalf of the first respondent. Though notice has been served on the second respondent/defacto complainant and his name was printed in the cause list today, none appears on his behalf.

3. The case of the prosecution is that owing to land dispute between the petitioner's family and the second respondent/defacto complainant, the petitioner along with other accused persons had attacked the defacto complainant. The complaint given by the second respondent in this regard culminated into filing of charge sheet against the petitioner herein and three others for offences under Sections 294(b), 323 and 324 of IPC and the same was taken on file by the learned Judicial Magistrate No.II, Sankagiri in C.C.No.15 of 2016. Challenging the said proceedings in C.C.No.15 of 2016, as against the petitioner herein, the present Criminal Original Petition has been filed. The petitioner has been arrayed as the third accused.

4. According to the learned counsel for the petitioner, the offences alleged in the charge sheet have not been made out as against this petitioner and that the petitioner is innocent. The learned

counsel further submitted that the petitioner herein is a final year student of an Engineering course, apart from that, a meritorious Hockey player in the national level. The complaint has been made with a view to spoil his career in view of the land dispute pending between the petitioner's family and the defacto complainant's family.

5.The learned Additional Public Prosecutor submitted that the statements made under Section 161 (3) Cr.P.C., and the averments in the complaint constitutes the offences for which the petitioner has been charged and hence, there is no basis for the petitioner to seek for quashing the same.

6.Among the sections charged, Section 324 & 294(b) of IPC are cognizable offences and Section 323 IPC is a non cognizable offence. All the statements of the witnesses and the complainant suggests that the petitioner had caused hurt to the defacto complainant by using his hands. Hence Section 324 IPC has not been made out as against this petitioner since he has not used any dangerous weapons for causing such hurt. As such, this overt act may at the most attract Section 323 IPC alone, which is a non cognizable offence.

7.It is seen that the first respondent had also charged the petitioner for an offence under Section 294(b) IPC and the overt act contributed to the petitioner in this regard is that , he along with four others, had used bad words against the defacto complainant. The utterance of these words is alleged to have been made by the petitioner and all the other accused together on 17.05.2015 at 5.00 p.m. in the house of the defacto complainant.

8.In order to constitute the commission of an offence under Section 294(b), two ingredients needs to be established namely, 1) the accused ought to have uttered the bad words in a public place and 2) by such an utterance, the accused should have caused annoyance to others. In the instant case, the averments that the petitioner used bad words is vague in nature. All the witnesses including the defacto complainant have made identical statements stating that the petitioner and three of his family members have jointly used bad words. Further, these words have been uttered in a private property belonging to the defacto complainant. None of the witnesses including the defacto complainant have stated that by using all such words, it has caused annoyance to others.

9. The intention of the legislature in making such an act of uttering obscene words punishable is because these conducts when done in a public place would cause annoyance to the bystanders and to the others who happen to be in such a public place. From the complaint of the defacto complainant as well as the 161(3) Cr.P.C. statements of the witnesses, none of them have spoken about the presence of public during the occurrence. Since the incident occurred in a private property between the defacto complainant and the accused persons alone and there were no public witnessing the incident, the offence under Section 294(b) IPC can never be made out. Hence it can only be concluded that Section 294(b) IPC, being a cognizable offence, has been implicated as against this petitioner only for the purpose of enabling the Investigating Officer to take cognizance of the complaint, since the only offence that may be made out as against the petitioner is one under Section 323 IPC which happens to be a non cognizable offence and the Investigating Officer is not entitled to investigate on the same in view of the bar under Section 155(2) of Cr.P.C. As such, the charges framed as against the petitioner herein is liable to be quashed.

10.In the result, the Criminal Original Petition stands allowed. Consequently, the proceedings in C.C.No.15 of 2016 on the file of the learned Judicial Magistrate No.II, Sankagiri, insofar as it relates to the petitioner/third accused is concerned, stands quashed. Consequently, connected miscellaneous petitions are closed.

24.11.2017

Index :Yes
Internet:Yes
DP



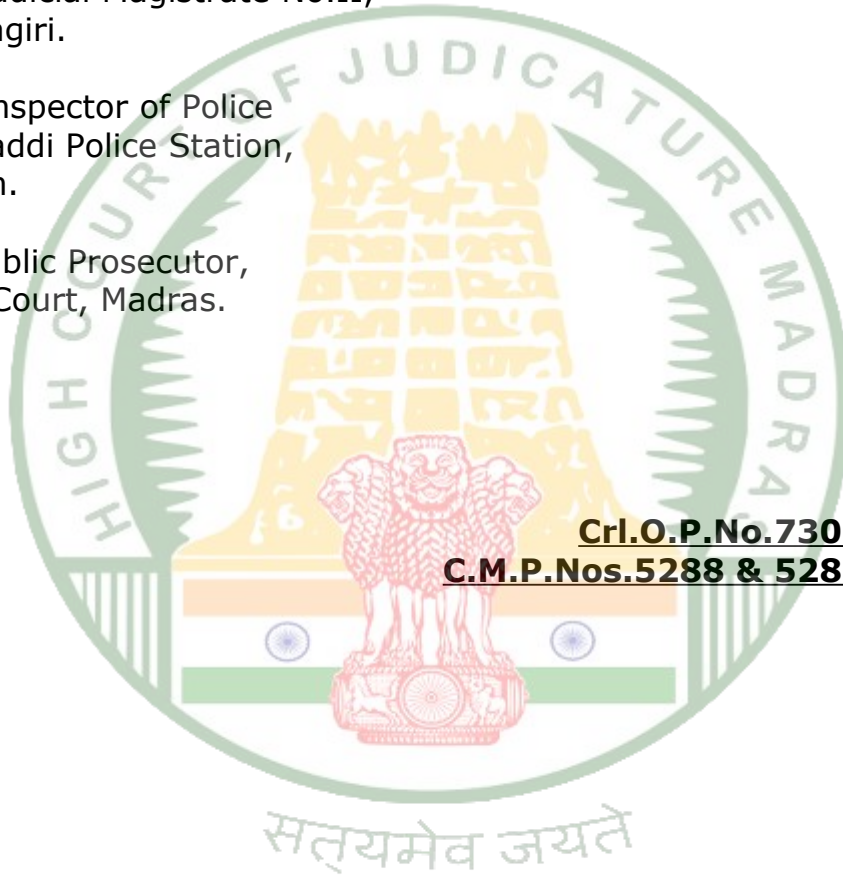
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M.S.RAMESH.J,

DP

To

1. The Judicial Magistrate No.II,
Sankagiri.
2. The Inspector of Police
Edapaddi Police Station,
Salem.
- 3.The Public Prosecutor,
High Court, Madras.



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