

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 24.04.2017

CORAM
THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Crl.O.P.No.22968 of 2011

Kesavan

.. Petitioner

Vs

1.The State,
rep. by S.I. of Police,
E-1, Mylapore Police Station,
Chennai
(Cr.No.1048 of 2011)

2.R.Sathish ... Respondents
(2nd respondent impleaded as per order
in Crl.M.P.No.4 of 2011 dt.18.4.2017)

PRAYER: Petition under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.4704 of 2011 pending on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai.

For Petitioner : Mr.L.Muralikrishnan

For Respondent : Mrs.Shobana
Government Advocate
(Criminal Side) for R1
Mr.P.Pazhamalai for R2

ORDER

This Criminal Original Petition has been filed by the petitioner to call for records in C.C.No.4704 of 2011 pending on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai.

2. The petitioner herein is the second accused and one Parthasarathy Bhattar is the first accused in C.C.No.4704 of 2011.

3. The case of the prosecution is that on 18.4.2011 at about 7.00 P.M., the first accused who was working in the Sri Adhikesava Perumal temple as Archagar trespassed into the office of the said temple and abused the defacto complainant using foul words, pushed and beat him. On 23.3.2011 at about 6.00 P.M., accused 1 and 2 alleged to have insulted the temple Chairman

Sridhar and abused him in filthy language. It is further alleged that accused 1 and 2 said to have often quarrelled with the other staff in the temple. Hence, the accused 1 and 2 have committed the offence under Sections 294 and 323 IPC. After completing the investigation, the Inspector of Police filed charge sheet before the learned XVIII Metropolitan Magistrate, Saidapet under Sections 294(b) and 323 IPC and the same has been taken on file as C.C.No.4704 of 2011.

4. The grievance of the petitioner is that he was employed in Sri Adhikesava Perumal Peyalvar temple at Mylapore as Archagar and the defacto complainant, who was working in the same temple, in collusion with the other staff and Chairman who were not in good terms with the petitioner, had lodged vexatious and false complaint due to previous enmity and in order to wreak vengeance with bald allegations as if certain incidents were taken place on 23.3.2011, 18.4.2011 and with these allegations lodged a complaint on 29.4.2011. Originally, the first respondent police had conducted a petition enquiry by issuing CSR, but thereafter, the case was registered and charge sheet was also filed.

5. I heard Mr.L.Murali Krishnan, learned counsel for the petitioner, Mrs.Shobana, learned Government Advocate (Criminal Side) for the first respondent and Mr.P.Pazhamalai, learned counsel for the 2nd respondent and perused the entire materials available on record.

6. The learned counsel for the petitioner submitted that even according to the defacto complainant and the statement of witnesses to the police, the petitioner was neither present nor participated in the alleged occurrence on 18.4.2011. He would submit that in respect of occurrence that took place on 23.3.2011 though the petitioner is said to have participated, admittedly, no complaint was lodged for the said incident by Sridhar, who is said to have been really aggrieved. The learned counsel further submitted that no charge can lie under Section 323 IPC as there is no statement of a Doctor or a medical report or any other document to show that the defacto complainant sustained any injury. No prima facie case is made out against the petitioner. The allegations levelled against the petitioner will not attract the ingredients of Section 294 (b) and 323 IPC and prayed for quashing of C.C.No.4704 of 2011.

7. Per contra, the learned Government Advocate (Criminal Side) submitted that based on the complaint given by the defacto complainant, a case in Crime No.1048 of 2011 on the file of E-Mylapore Police Station was registered against the petitioner and another for the offence under Sections 294(b), 323 and 506 (i) IPC. After investigation, the 1st respondent police filed a final report against the petitioner and one Parthasarathy for

the offence punishable under Section 294(b) and 323 IPC. The averments set out in the quash petition are matter of evidence and therefore, there is no necessity to quash C.C.No.4704 of 2011 and prayed for dismissal of the Criminal Original Petition.

8. The learned counsel for the second respondent supported the arguments of the learned Government Advocate (Criminal Side) for the first respondent.

9. I have considered the submissions made by the learned counsel appearing on either side and also perused the materials available on record.

10. It appears that in the complaint, the defacto complainant stated two occurrence i.e., dated 18.4.2011 and 23.3.2011. As far as the alleged occurrence dated 18.4.2011 is concerned, in the complaint, it has been stated that at about 7.00 P.M., the first accused Parthasarathy Bhattar trespassed into the office of the temple and had abused the defacto complainant in filthy language, pushed and beat him. As rightly argued by the learned counsel for the petitioner that the petitioner has nothing to do with the alleged occurrence said to have been occurred on 18.4.2011. Even according to the complaint and the statement given by the defacto complainant and other witnesses to the police, the petitioner was not participated. Thus, no prosecution can lie as against the petitioner for the alleged occurrence dated 18.4.2011, in which the petitioner has no role.

11. As far as the occurrence dated 23.3.2011 is concerned, in the complaint, it has been stated that at about 6.00 P.M., the first accused and the petitioner and their assistants insulted the Chairman Sridhar in temple's glass room and also abused him in filthy language. For the occurrence dated 23.3.2011, the defacto complainant lodged the complaint before the first respondent police only on 6.5.2011 by the second respondent herein combining the occurrence dated 18.4.2011. Admittedly, no complaint was lodged for the occurrence dated 23.3.2011 by Sridhar, who is said to have been really aggrieved.

12. Even assuming that the petitioner had said something out of rage, it cannot be termed as a threat in the absence of any relevant materials. Nothing has been produced to show that the petitioner had used filthy language. The complaint is total vague, bereft of any materials, particularly, attracting the provisions of Section 294(b) of IPC. Though one or two witnesses have stated that the petitioner scolded the defacto complainant, there is no corroborative evidence to prove the same. Since the witnesses cited and examined by the 1st respondent police are staff members of the temple, naturally, they would support the defacto complainant only.

13. There is no statement of Doctor recorded in this case. No medical report or any other document was produced to show that the defacto complainant sustained injury. The complaint is silent about details of injury sustained. The defacto complainant was not treated by any Doctor. In the absence of medical report and other related documents, no charge can lie under Section 323 of IPC.

14. As rightly argued by the learned counsel for the petitioner, even assuming that if the defacto complainant had sustained any injury, the petitioner has nothing to do with the same, as even according to the prosecution, the petitioner has not participated in the occurrence on 18.4.2011, in which the defacto complainant is alleged to have abused and pushed down.

15. The complaint as well as the other materials produced before this Court would show that for a mere difference of opinion between the fellow staff on the issue of administration of the temple, the defacto complainant has lodged a complaint. The materials placed by the prosecution would show that a false case has been foisted on the basis of a belated criminal complaint on the strength of the interested persons, who were inimical towards the petitioner. Therefore, this Court is of the view that the materials available do not made out any criminal case as against the petitioner. No witnesses have spoken about the role of this petitioner on 18.4.2011. Absolutely, no material has been produced by the prosecution to make out a case against the petitioner. The case which was launched against the petitioner is nothing but an abuse of process of law.

16. For the foregoing reasons, this Court is of considered opinion that if the above case is allowed to be proceeded against the petitioner, the same will be nothing but wastage of precious Court time, besides will be an abuse of process of law.

17. In the result, this Criminal Original Petition is allowed and the criminal proceedings in C.C.No.4704 of 2011 pending on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai is hereby quashed as far as the petitioner is concerned. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vs

To

1.The XVIII Metropolitan Magistrate,
Saidapet, Chennai.

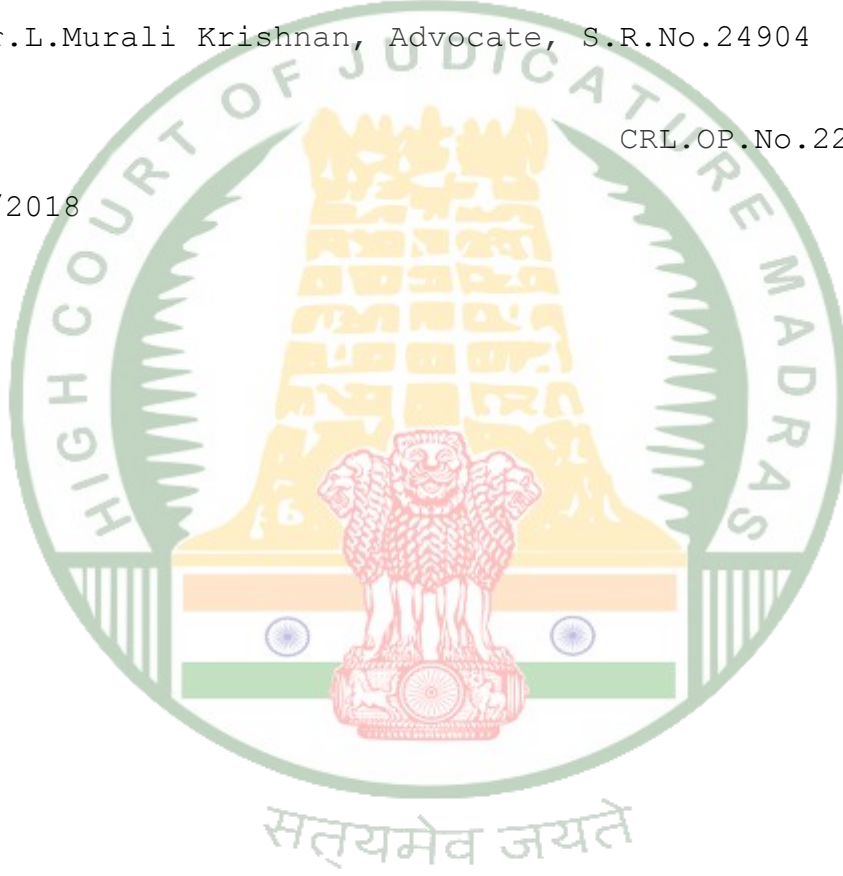
2.The Sub Inspector of Police,
E1. Mylapore Police Station,
Chennai -4.

3.The Public Prosecutor,
High Court,
Chennai - 104.

+lcc to Mr.L.Murali Krishnan, Advocate, S.R.No.24904

CRL.OP.No.22968 of 2011

rrs 04/12/2018



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