

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P No.9769 of 2010

and

M.P.No.1 of 2010

V.N.Shankaramba ... Petitioner/Accused

vs.

V.V.Balasubramanian ... Respondent/Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for records and quash the proceedings in C.C.No.118 of 2010 pending on the file of the Judicial Magistrate No.II, Poonamallee.

For Petitioner : Mr.V.Gopinath, Senior Counsel
for Mr.P.Sankaranarayanan

For Respondent : Mr.G.Mohanraj

JUDGMENT

That instant Criminal Original Petition is filed by the petitioner herein to quash the private complaint filed by the respondent herein before the Learned Judicial Magistrate No.II, Poonamalli.

2.The crux of the issue involved in this Criminal Original Petition is that the petitioner herein and respondent are neighbors. It is the complaint of the respondent that the petitioner herein is having 10 dogs and apart from that she is also feeding other 5 Street dogs and thereby causing nuisance to the respondent. When the respondent herein questioned about the nuisance caused to him, he was abused by the petitioner herein with un-parliamentary words. Hence the respondent/complainant sent a representation to the local Panchayat, as the representation was not considered, he filed W.P.No.30814 of 2007 before this Court and in which this Court directed the Vanagaram

Panchayat President to dispose of the representation. The petitioner herein despite given undertaking before the Panchayat President, has not keep up the undertaking and started to cause inconvenience, nuisance to the respondent continuously. Hence he filed a private complaint before the Learned Judicial Magistrate No.II, Poonamalli for registering case against the petitioner for the offence under sections 268, 278, 290, 291, 294(b) and 506(ii) of IPC and the same was taken cognizance by Learned Magistrate by order dated 15.03.2010. As against the said order of taking cognizance of the offence against the petitioner, he has come up with this Criminal Original Petition to quash the same.

3.I heard Mr.V.Gopinath, learned Senior Counsel for Mr.P.Sankaranarayanan, learned counsel for the petitioner and Mr.G.Mohanraj, learned counsel for the respondent and perused the records.

4.In this case the complaint of the respondent herein / complainant has been duly addressed by Panchayat President of Vanagaram Panchayat and based on that the contempt petition filed by respondent herein was also closed. Further according to the petitioner herein she is residing in a house measuring to an extent of two grounds which is equal to 11 cents and her house is surrounded by roads on four sides. Further, the petitioner stated that she is a spinster living alone and for her safety purpose she is keeping dogs with her. The respondent's house is situated opposite to the house of the petitioner herein and in between their houses 30 feet road is available.

5.Further, the perusal of the complaint disclose that in the list of witnesses the respondent has mentioned two witnesses including himself and another one is the President of Vanagaram Panchayat. Except the above said two witnesses no other individual name is mentioned and therefore the question of committing the offence of public nuisance does not arise and no offence is made out so as to attract the ingredients of section 268 of IPC. Further, as rightly pointed out by the Learned counsel for the petitioner, to attract section 294(b) of IPC the respondent / complainant should have mentioned the exact obscene word in the complaint so as to attract the penal provision of section 294(b) of IPC. In the absence of the specific word, no offence could be made out against the accused.

6.Further, there is no averment in the complaint in respect of the alleged offence under Sections 278 and 291 of IPC. The

respondent herein has not made out a case against the petitioner herein so as to attract the offence under Sections 278 and 291 of IPC and the ingredients mentioned in the said section has not been averred in the private complaint filed by the respondent herein. Apart from that a reading of the private complaint could not make out a case against the petitioner herein for the offence under Section 506(ii) of IPC. In the considered opinion of this Court a mere bald allegation that the petitioner herein threatened the complainant with dire consequence alone is not sufficient. Viewing the case from any angle the cognizance of the offence taken by the learned Judicial Magistrate against the petitioner herein is bad in law.

7. In such view of the fact, the private complaint filed by the respondent herein against the petitioner herein cannot be entertained and a cognizance taken by the Learned Magistrate with a direction to issue summon is not at all justified. For the foregoing reason, this Court is of the view that no prima facie case is made out against the petitioner herein and so the private complaint is liable to be quashed, accordingly it is quashed.

8. However, it is always open to the respondent herein to make a representation against the petitioner herein for committing public nuisance if any will be committed before the local authority concern if he so advised. In case of any such representation is received by the local authority namely Vanagaram Panchayat, it is directed to consider the same and pass orders on merits in accordance with law by providing opportunity to both parties.

9. With the above observation, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

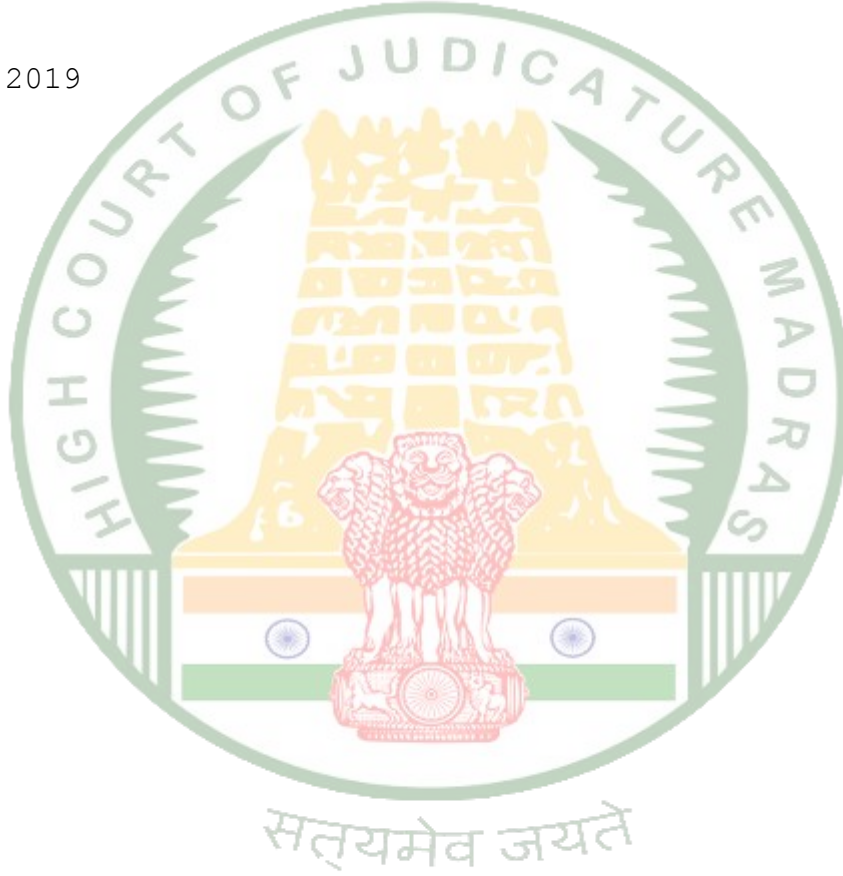
The Judicial Magistrate No.II, Poonamallee.

+2 cc to Mr.P.Sankaranarayanan, Advocate Sr.No.23933

+1 cc to Mr.G.Mohan Raj, Advocate Sr.No.23794

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JP (CO)
CSL/08.01.2019



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