

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.06.2017

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

Crl.O.P.No.22643 of 2010

1.Dr.Dawood Sharief
2.Dr.Thameem Sharief
3.Captain Zahid Hussain

.. Petitioners/Accused

VS

State,
rep. by Inspector of Police,
E-2, Royapettah Police Station,
Chennai.

.. Respondent/Complainant

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to quash the proceedings in C.C.No.4018 of 2010 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai.

For Petitioners : Mr.N.Ranganathan
For Respondent : Mr.P.Govindarajan
Addl. Public Prosecutor

ORDER

The petitioners are the accused and they have filed this petition seeking for the relief of quashing the proceedings pending in C.C.No.4018 of 2010 on the file of the learned XVIII Metropolitan Magistrate, Saidpet, Chennai.

2. The learned counsel for the petitioners submitted that the petitioners have been implicated for the alleged offence under Section 506(i) I.P.C. He would submit that even if the entire allegations contained in the complaint and other materials available on record are taken on its face value, the complaint in Crime No.399 of 2009 lodged by the defacto complainant is a counter blast to the complaint registered in Crime No.397 of 2009 by the first petitioner on 24.6.2009.

3. The learned counsel submitted that the allegation in the FIR was that the petitioners threatened to kill the defacto complainant on 24.6.2010 at 2.30 P.M. In his complaint, the defacto complainant clearly admitted the fact that the first petitioner was appointed as Vice Principal for the Evening College by the Management and this was not liked and/or accepted by the defacto complainant and his colleagues. Hence, they formed a group and protested by raising slogans against the

first petitioner to resign from the Vice Principal post.

4. The learned counsel further submitted that the defacto complainant had conveniently not disclosed the fact that he along with other Professors had assaulted the first petitioner while he was entering his cabin and this fact was relevant from the FIR registered with the respondent in Crime No.397 of 2009. According to the learned counsel, the materials available on record do not constitute the offence under Section 506(i) I.P.C.

5. Per contra, the learned Additional Public Prosecutor submitted that the material available on record discloses that there was a group clash between the petitioners group and the complainant group qua appointment of the first petitioner as Vice Principal of the Evening College of New College, Royapettah, Chennai. The learned Additional Public Prosecutor would submit that there is an allegation of criminal intimidation in the FIR and the same was alleged during the examination of witnesses recorded under Section 161 Cr.P.C. also.

6. I heard Mr.N.Ranganathan, learned counsel for the petitioners and Mr.P.Govindarajan, learned Additional Public Prosecutor for the respondent and I have carefully considered the rival contentions put forth by either side and also perused the impugned complaint and other materials available on record.

7. It is seen that the petitioners and the defacto complainant are Professors of New College, Royapettah, Chennai. The first petitioner was appointed as the Vice Principal of Evening College by the Management on 01.6.2009, while the other petitioners and the defacto complainant are the Professors of the same College.

8. It is the case of the petitioners that on 24.6.2009 at around 2.30 P.M., a group of around 40 Professors organised a gathering outside the office of the first petitioner and raised slogans with the help of hand held battery fitted loud speakers demanding resignation of the first petitioner and created disturbance to the smooth functioning of the Evening College. The defacto complainant spearheaded the gathering. The first petitioner being the person responsible for the smooth functioning of the Evening College was not allowed to enter his office. The first petitioner informed them that if they want to question the appointment, they can very well complain to the Management. Immediately, the group surrounded the first petitioner and did not allow him to move or enter his office and they group turned violent and assaulted the first petitioner when he tried to enter his office. At that time, the first petitioner developed severe chest pain and was in need of immediate medical treatment, but the group went to the extent of entering the office of the first petitioner and stopped him from

calling for any medical help.

9. It was the further case of the petitioner that later at 4.30 P.M., the petitioners 2 and 3 rushed to the office of the first petitioner and took him to the Royapettah Hospital, where he underwent treatment for abdomen and chest muscle injury, hypertension leading to prostrate enlargement and bleeding from right ear. Thereafter, at 19.45 hours, the first petitioner went to the respondent police station and lodged a complaint and the respondent police registered the case in Crime No.397 of 2009 under Sections 323, 342 and 506(i) I.P.C.

10. It is clear that the defacto complainant after knowing the information of registration of FIR against him, preferred a complaint on the next day i.e., on 25.6.2009 at about 14.45 hours with the respondent police and the same was registered in Crime No.399 of 2009 under Section 506(i) I.P.C. The allegation in the FIR in question was that the petitioners threatened to kill the defacto complainant on 24.6.2009 at 2.30 P.M. On a perusal of the records, it is seen that the defacto complainant cleverly omitted to narrate the entire facts in his complaint.

11. In the case on hand, prima facie, the respondent police, instead of taking action against the defacto complainant in the FIR registered in Crime No.397 of 2009 first, recorded the statement of the defacto complainant and other witnesses and filed the final report before the Court concerned and the same was taken on file as C.C.No.4018 of 2010 and the petitioners are now facing trial.

12. From the above narrated facts, it is clear that the respondent has not applied his mind, but has acted against the settled law on investigation. The respondent police cannot plead ignorance to the fact that Crime No.397 of 2009 and Crime No.399 of 2009 are arising out of the same clash. The respondent police, instead of treating the complaint in Crime No.399 of 2009 as a counter to the earlier complaint in Crime No.397 of 2009, went on to register the FIR and in fact, the respondent police have not followed the procedure as contemplated in O.588-A of the Police Standing Orders, which reads as under:

"588-A. Charge sheets in cases and counter cases.- In a complaint and counter complaint obviously arising out of the same transaction the investigating officer should enquire into both of them and adopt one or the other of the two courses, viz, (1) to charge the case where the accused were the aggressors or (2) to refer both the cases if he should find them untrue. When the investigating officer proceeds on the basis of the complaint it

is his duty to exhibit the counter complaint in the court and also to prove medical certificates of persons wounded on the opposite side he should place before court a definite case which he makes it to accept. The investigating officer in such cases should not accept in toto one complaint and examine only witnesses who support it and give no explanation at all for the injuries caused to the other side. The truth in these cases is invariably not in strict conformity with either complaint and it is quite necessary that all the facts are placed before the court to enable it to arrive at the truth and a jut decision.

If the investigating officer finds that the choice of either course is difficult, viz., to charge one of the two cases or to throw out both, he should seek the opinion of the Public Prosecutor of the District and act accordingly. A final report should be sent in respect of the case referred as mistake of law and the complainant or the counter complaint, as the case may be should be advised about the disposal by a notice in P.96 and to seek remedy before the specified magistrate, if he is aggrieved by the disposal of the same by the police."

13. Thus, in cases of complaints and counter complaints, there has been a procedure to be adopted by the Investigating Officer. Firstly, the Investigating Officer has to enquire into both the complaints, find out who were the aggressors and file a charge sheet against them or refer both the cases if he finds them untrue. Where the Investigating Officer finds it difficult to choose either of the above courses, he should seek the opinion of the Public Prosecutor and act accordingly.

14. It is clear from the materials available on record that contrary to the Police Standing Orders referred to supra, the respondent police proceeded to conduct a biased investigation culminating into the final report. Therefore, the course adopted by the respondent police is improper and bad in law.

15. Moreover, for the occurrence on 24.06.2009 at 2.30 P.M., the defacto complainant had lodged complaint on 25.06.2009 at 2.25 P.M. Thus, there was a delay in lodging the FIR. There was no proper explanation forthcoming for the delay in lodging the FIR. It is pertinent to note that no person was injured from the side of the defacto complainant.

16. The learned Additional Public Prosecutor contended that there was an allegation of criminal intimidation in the FIR and

the same was alleged during the examination of witnesses recorded under Section 161 Cr.P.C.

17. Empty threats do not prima facie mean that the case under Section 506 I.P.C. is made out against the petitioners. Except a vague and bald allegation of criminal intimidation, the defacto complainant has not stated that there was any threat to his life or sought for any police protection. Therefore, I am of the view that the offence under Section 506(i) I.P.C. is not maintainable. Moreover, on the face of the record, no case is made out against the petitioners.

18. In view of the above said reasons, this Court is of the view that the allegations levelled in the complaint do not constitute any offence under Section 506(i) I.P.C. and it is a clear case of abuse of process of Court and also complaint and counter-complaint. Therefore, the proceedings initiated against the petitioners are liable to be quashed.

19. Accordingly, the petition is allowed and the proceedings initiated against the petitioners in C.C.No.4018 of 2010 pending on the file of the learned XVIII Metropolitan Magistrate, Saidapet, Chennai is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

vs

To

1. The XVIII Metropolitan Magistrate,
Saidapet, Chennai.
2. The Inspector of Police,
E-2, Royapettah Police Station,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

+2cc to Mr.S.N.Ranganathan, Advocate, S.R.No.46083

CrI.O.P.No.22643 of 2010

rrs 26/09/2018.