

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Reserved on : 09.08.2017)

(Pronounced on : 20.11.2017)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.O.P.No.1566 of 2012

and

M.P.No.1 of 2012

1. Rajamma Venugopal
2. Ashok Venugopal
3. Vasantha Ashok ... Petitioners/Accused

.. Vs ..

1. The Commissioner of Police,
Egmore, Chennai - 600 008.
2. The Inspector of Police,
F.2, Egmore Police Station,
Chennai - 600 008.
3. M.Santhi Hari ... Respondents/Complainants

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the proceedings in C.C.No.4402 of 2011 on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai - 600 008 and to quash the same.

For Petitioners : Mr.S.Sridhar
For RR-1 and 2 : Mr.B.Ramesh Babu,
Government Advocate
For R-3 : Mr.N.Sudharsan

ORDER

This criminal original petition is filed under Section 482 of Cr.P.C., to quash the proceedings in C.C.No.4402 of 2011 pending on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai.

2. The brief facts, which are necessary for determination of the case, are as follows:-

[i] The first petitioner along with her son/second petitioner and her daughter-in-law/third petitioner jointly living at house No.6, Egmore High Road, Egmore, Chennai, for over 50 years. The said house and ground bearing Door No.6, Egmore High Road, Egmore, Chennai, was originally belonged to the father of the first petitioner and after his demise, the first petitioner got her undivided share and interest by virtue of a decree passed by the High Court in the suit filed for partition. The younger brother of the first petitioner namely, Sri.R.Sundarrajan, who is an Advocate also having a share in the said house and ground, is living in the same house and is using one portion as his office. The intention of the said R.Sundarrajan is that the petitioners will vacate and go away from the house, if the verbal and vulgar abuse is continued every day. On 10.06.2011, the said R.Sundarrajan, without any reason, started quarelling with the first petitioner and against her filthy and abusive language was hurled by the said R.Sundarrajan. The ugly scene was watched by the general public, since the house is facing the Egmore High Road. The said R.Sundarrajan, K.S.Hari and his wife Shanthi brutally assaulted the first petitioner after pulling her saree. The first petitioner, after taking treatment from a Doctor, went along with the other petitioners to the second respondent police straight away and given a complaint in writing against the said R.Sundarrajan and his family friend K.S.Hari and Shanthi. But the second respondent, after having received the complaint, failed to register an FIR against the said R.Sundarrajan, K.S.Hari and his wife Shanthi for a long period.

[ii] In contra, the said K.S.Hari and his wife Shanthi along with the said R.Sundarrajan after having assaulted the first petitioner, at the advise of the said R.Sundarrajan, given a false complaint against the petitioners and the second respondent, without any enquiry and proper investigation, registered a case in C.C.No.4401 of 2011 and the same is now pending before the learned XIV Metropolitan Magistrate. The said Shanthi has given a complaint with false and frivolous allegations to the second respondent after two months and on the basis of the said complaint, the second respondent has registered FIR against the petitioners and in the FIR, it is mentioned that the complaint was received on 07.08.2011. The second respondent had received the complaint after two months of the assault by the said R.Sundarrajan, K.S.Hari and Shanthi after having received the complaint only from Shanthi and curiously, the second respondent has registered both the FIRs

simultaneously and registered both the cases on 10.09.2011 and without any enquiry, the second respondent has registered a case against the petitioners in C.C.No.4402 of 2011 for the alleged offences under Sections 294, 323 and 506(1) of IPC and the said case is a foisted one and counter blast to the complaint given by the petitioners against the said R.Sundarrajan, K.S.Hari and Shanthi. Hence, the petitioners herein have filed this criminal original petition before this Court seeking to quash the proceedings in C.C.4402 of 2011 pending on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai.

3. Learned counsel appearing for the petitioners/accused submitted that the complaint given by the de facto complainant as against the petitioners is only a counter blast for the complaint given by the petitioners against the de facto complainant and the alleged scene of occurrence being inner warrant (cs; tuhz;lh), the offence under Section 294(b) of IPC does not arise. It is further submitted that though there is an allegation, no accident register has been filed before the respondent police and therefore, the learned counsel appearing for the petitioners prayed for quashment of the proceedings in C.C.No.4402 of 2011.

4. In support of his contentions, the learned counsel appearing for the petitioners has relied upon a decision of the Allahabad High Court in the case of Suresh Kumar & another Vs. State of U.P. [Criminal Appeal No.782 of 1979] and a decision of the Rajasthan High Court reported in 2005 CrL.L.J. 4726 [Nawal Ram. V. The State of Rajasthan and others] and also a decision of this Court reported in 2002 CrL.L.J. 1420 [Saraswathi and another Vs. State].

5. Per contra, the learned counsel appearing for the third respondent submitted that the first accused and her brother is having a civil dispute as to the enjoyment of the common property and as a family friend, the third respondent went over there and she was assaulted by the petitioners and hence, she gave a complaint to the police. It is further submitted that the first accused styling herself as a social worker and the second accused posing himself as Senior Sports Editor were making all unworthy acts to stifle the prosecution against the third respondent and hence, prayed for dismissal of the petition.

6. Learned Government Advocate (CrL.Side) appearing for the respondents 1 and 2 submitted that this is a case and counter case and the complaint given by the first petitioner/first accused against her younger brother was registered in FIR No.1272 of 2011 for the offences under Sections 294(b) and 323 of IPC and the complaint given by the third respondent herein against the petitioners was registered in FIR No.1133 of 2011 for the offences under Sections 294(b), 323 and 506(1) of IPC

and after investigation, the police have filed charge sheets in both the cases and the same were taken on file as C.C.Nos.4401 and 4402 of 2011 and both the incidents are referred to in a very close proximity of time.

7. This Court has considered the submissions made by the learned counsel on either side and perused the final reports filed in both the crime numbers.

8. Taking into consideration the offence alleged to have taken place, the question that has to be decided is whether the scene of occurrence is viewable by the public from the common road so as to attract the ingredients of Section 294(b) of IPC. In this case, the scene of occurrence has been disputed. According to the petitioners, it is 'உள் வராண்டா' and according to the third respondent/de facto complainant, it is 'Varanda' which can be viewed by any public from the road annexing thereto and hence, the disputed factual position as to whether the alleged scene of occurrence comes within the public view is a matter for evidence that has to be let during the time of trial.

9. With regard to the offence under Section 323 of IPC, after going through the statement of witnesses annexed in the final reports, this Court is of the considered view that there are sufficient materials available on record to presume that the petitioners are alleged to have committed the offence and sufficient materials are available to frame charge against them and hence, it is a matter for evidence as to the establishment of the alleged offence beyond reasonable doubt and hence, this is not a fit case for quashing the proceedings in C.C.No.4402 of 2011 and accordingly, this petition is liable to be dismissed.

10. In the result, this Criminal original Petition is dismissed. Consequently, the connected miscellaneous petition is also dismissed.

सत्यमेव जयते
sd/-

Assistant Registrar(CCC)

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Sub Assistant Registrar

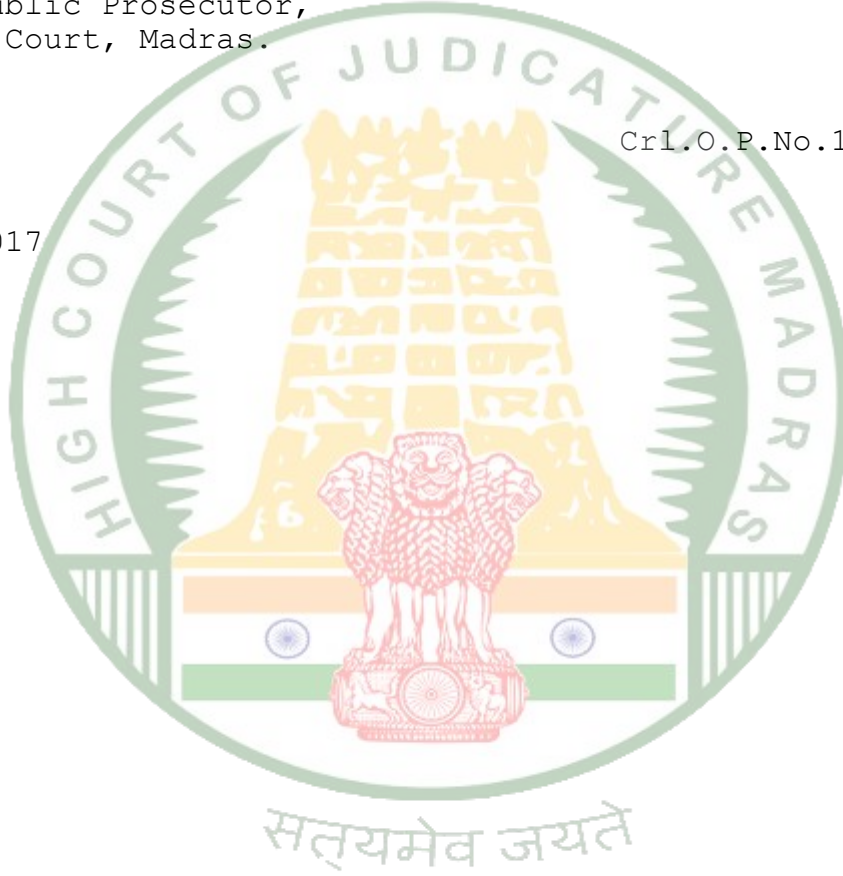
Jr1

To

1. XIV Metropolitan Magistrate,
Egmore, Chennai - 600 008.
2. The Commissioner of Police,
Egmore, Chennai - 600 008.
3. The Inspector of Police,
F.2, Egmore Police Station,
Chennai - 600 008.
4. The Public Prosecutor,
High Court, Madras.

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