

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

RESERVED ON :29.11.2017

PRONOUNCED ON :18.12.2017

Crl.OP No.19470 of 2010

and

M.P.No.1 of 2010

Rajendran

..

Petitioner

Vs

1.State by
Inspector of Police,
Kondalampatti Police Station,
Crime No.933 of 2009.

2.Thirulogan

..

Respondents

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in respect of the charge sheet in C.C.No.14 of 2010 pending on the file of the Judicial Magistrate No.5, Salem and quash the same.

For Petitioner

:Mr.R.Nalliappan

For R1

:Mr.Muthukumar, Govt. Advocate

For R2

:No appearance

ORDER

This Criminal Original Petition has been filed under Section 482 Cr.P.C., to call for the records in respect of the charge sheet in C.C.No.14 of 2010 pending on the file of the Judicial Magistrate No.5, Salem and quash the same.

2. The second respondent herein gave a complaint in C.S.R.No.169 of 2009, however as no action has been taken by the first respondent police. He moved the learned Judicial Magistrate-V, Salem, on the direction of the Court, the F.I.R was registered in Crime No.933 of 2009, on the file of the first respondent and after investigation charge sheet has been filed and taken on file as C.C.No.14 of 2010.

3. The brief facts leading to the filing of the case are as follows:-

i) The petitioner is working as a Foreman in Tamil Nadu Electricity Board at Namakkal District and the wife of the petitioner herein is working as Head Master in Nanjundapuram Government Primary School.

ii) Adjacent to the petitioner's land, the defacto-complainant in the above said case is doing agricultural work with the help of his brother. The defacto complainant has given frequent troubles to sale the petitioner's land to him for a meager amount, but the petitioner has refused to accept the offer of the 2nd respondent. Hence, the 2nd respondent foisted five consequent complaints against the petitioner herein and his family members in five consecutive occasions.

iii) The 2nd respondent has made another complaint before the Senthamangalam Police Station as like the petitioner has stolen motor pump from the common well and the same was registered in Crime Number dated 19.12.2010 under Section 427,506(ii) and 379 (NP) I.P.C.

iv) The 1st respondent has initially registered the above said case under Section 294(b), 436,506(ii) and 307 I.P.C after the direction of learned Judicial Magistrate on the complaint of the 2nd respondent filed under Section 156(3) Cr.P.C and subsequently altered the above said offence under Section 294(b), 427 and 506(ii) I.P.C and filed final report before the learned Judicial Magistrate No.V, Salem and the same was taken into file in C.C.No.14 of 2010 and to quash the same the petitioner herein filing the above petition.

4. The learned counsel for the petitioner has submitted that at the time occurrence, the petitioner herein was in Duty at Namakkal District and the same was certified by the authorized officer of the Electricity Board, however the 2nd respondent herein has foisted the above said case at Salem as like the petitioner herein was at Salem and committed the above said offence and this itself enough to show that case of the respondents are total abuse of process. To grab the property of the petitioner, the 2nd respondent made 5 consecutive complainants against the petitioner herein and his family members on different occasions. In the complaint has not satisfies to attract an offence under Section 294(b).

5. The learned counsel for the petitioner has relied upon the decision of Hon'ble Thiru.Justice K.Mohan Ram in 2010-2-L.W.(CrI) 1434 (R.Ramesh Vs.State by Inspector of Police, Kachirapalayam P.S., Villupuram District)

6. The learned counsel for the respondent has submitted that due to the previous enmity, since the accused was convicted, based upon the

earlier complaint given by the defacto-complainant herein against the accused on 29.07.2009.

7. The accused has utter obscene words against him and caused damage to the Rice Mill and criminally intimidated and he filed complaint before the first respondent-police and C.S.R was given. In the absence of any further proceedings, he moved the Magistrate Court and as per the orders of the Magistrate, F.I.R was registered and investigation has been conducted and charge sheet has been laid.

8. After hearing rival contentions of both the parties and also the typed set filed by both the parties, it is seen that the petitioner has come to this Court to quash the case pending in C.C.No.14 of 2010 for an offence under Section 294(b), 427, 506(ii) I.P.C. The facts of the case is that the accused had previous enmity on the complainant for having been convicted for an offence under Section 294(b) in Cr.No.279/09 on the basis of the complaint given by the complainant.

9. According complainant, the accused and the complainant are sharing a common well for irrigation in Kalapannaikanpatti Village in the adjoining Namakkal District. The accused was not comfortable with complainant to share a common well and hence was regularly causing trouble to the complainant and on many occasion the accused threatened and abused the complaint and his workmen. On 1.5.2009 the motor fixed in the common was damaged by the accused and the complaint sent his brother to repair the motor but the accused did not permit the complaint brother repair their motor

and fraught with and hence the complainant without any option gave police complainant against the accused before the senthamangalam Police station and the same was registered in Cr.No.292 of 2009 for an offence under Section 294(b) and 323 I.P.C.

10. Thereafter, on 14.06.2009 when the complainant went to do his agriculture work the accused threatened the complainant with help of local people and restrained the complainant from entering the field and again the complainant lodged a complaint against the accused and the same is registered in Cr.No.357 of 2009 for offence under Section 294(b), 323, 506(ii). The accused having committed so many offences against the complaint did not mend his attitude against the complainant and he committed to theft of the Electric Motor fixed the common well by the complainant and again an complaint was lodged with the police and was registered under Section 379 I.P.C and all the cases are pending except one case in the accused /petitioner herein has been convicted.

11. Since the accused person is a Government servant and many cases has been filed against him by the complainant and in one case he has been convicted hence the accused with strong criminal motive reached the factory of the complainant on 29.07.2009 after finishing his duty and started abusing the complainant and pelted stone on the complainant premises and caused damages to the windows and glass panels. The complainant immediately gave complaint to the respondent police and the respondent police did not register the case but instead gave receipt in CSR No.169 of

2009. Even after one month the respondent police did not take any action on the complaint given by the complainant and hence the complainant filed a petition before the Judicial Magistrate No.V Salem the Hon'ble Court was please to direct the respondent to register the case. It was only on the direction of the Hon'ble Court the case was registered by the respondent police. Initially the case was registered under Section 294(b),436,506(ii) & 307 I.P.C.

12. The complaint clearly and specifically discloses the offence committed and the overtact of the accused and hence this is not a fit case for invoking the jurisdiction under Section 482 Cr.P.C.

13. All the contentions raised by the petitioner can be proved only by adducing evidence. After perusing the relevant papers, it disclosed commission of offence and hence, the Judicial Magistrate No.V, Salem directed the respondent to register the F.I.R. The statements of L.W.1 the complainant clearly outlines the overtact of the accused and his involvement in the offence. The statement of other L.W.s also corroborates with the statement of the L.W.1 and shows the involvement of the accused. The investigation has been completed and charge sheet has been filed altering the offence to that of offence under section 294(b),427 and 506(ii) I.P.C. The investigation in this case has been fair enough, since the investigation office choose to delete the offence under Section 307.

14. After seeing the statement of witnesses annexed with charge sheet and after going through the statement of witnesses of L.W.1 and other

witnesses, I am of the considered view that there is sufficient material to presume with the accused as committed offence under Section 294(b) and 506(ii) I.P.C and other points raised by the learned counsel for the petitioner are matter of fact that has to be elicited during the trial of the criminal cases.

15. In view of the factual matrix as narrated above and in view of the sufficient of positive material that is found with the statement of L.W.s annexed with the charge sheet filed in the criminal case before the Magistrate Court, I am of the considered view that there are sufficient material are available to frame the charge against the accused for the alleged offence as stated in the final report and it is for the petitioner to substantiate his plea of alibi through the cross examination of the prosecution witnesses and independent witnesses if he choose to let in and as the matter of the points raised by the petitioner is matter for trial and I find, this is not a fit case to exercise to powers under Section 482 of Cr.P.C.

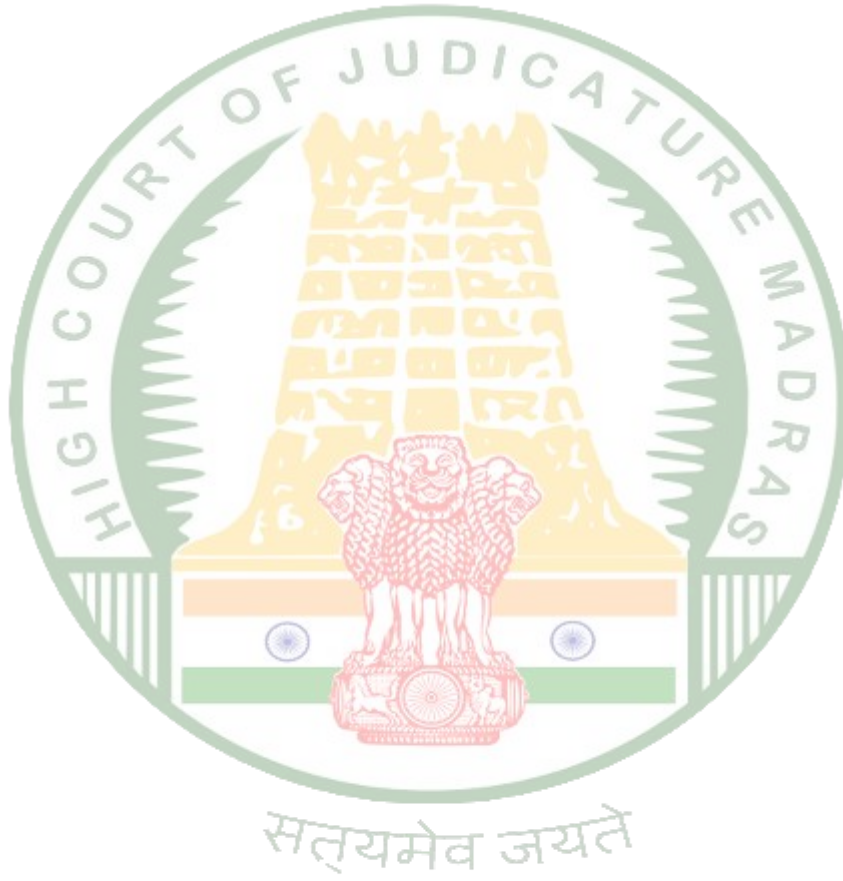
16. In this view of the matter, I am not inclined to accept the case of the petitioner for quashment and the grounds raised by the petitioner does not warrant exercise of power in factual background as narrated above under Section 482 of Cr.P.C.

17. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

18.12.2017

To

- 1.The Judicial Magistrate No.5, Salem
2. The Public Prosecutor,
High Court, Madras.



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RMT.TEEKAA RAMAN,J.,

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Pre-Delivery order in
Crl.OP. No.19470 of 2010

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