



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:30.08.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.O.P.(MD)No.9335 of 2017

and

CRL.M.P.(MD)Nos.6336 & 6337 of 2017

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Mohamad Nainar @ Mohamad Jakal Nainar ... Petitioner/A-1

-Vs-

1. State rep. By,
The Inspector of Police,
Cumbum North Police Station,
Theni District.
(Crime No.280 of 2014) ... Respondent/Complainant
2. S.Dhaha Ismail ... Respondent/Defacto
Complainant

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.97 of 2015 on the file of the learned Judicial Magistrate, Uthamapalayam and to quash the same as illegal.

For Petitioner : Mr.A.K.Manickam
For R-1 : Mr.K.Anbarasan,
Government Advocate(Crl. Side).

O R D E R

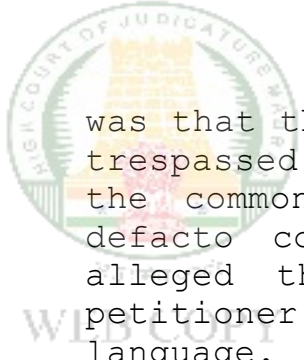
This Criminal Original petition is filed for quashing the criminal proceedings(Charge Sheet) in C.C.No.97 of 2015 on the file of the learned Judicial Magistrate, Uthamapalayam.

2. Heard the learned counsel appearing for the petitioner and the learned Government Advocate(Criminal side) appearing for the first respondent.

3. On the basis of the complaint given by the second respondent/defacto complainant, a case was registered originally for the offences under Sections 294(b), 448, 427 and 506(ii) I.P.C. After filing of the Charge Sheet, the case was taken on file in C.C.No.97 of 2015 by the learned Judicial Magistrate, Uthamapalayam.

<https://hcservices.ecourts.gov.in/hcservices/>

4. The allegation in the complaint as against the petitioner



was that the petitioner who is the first accused along with others trespassed into the house of the defacto complainant and damaged the common wall between the houses of the petitioner and the defacto complainant with spade and crow bar. It is further alleged that the defacto complainant was threatened and the petitioner also scolded the defacto complainant with filthy language.

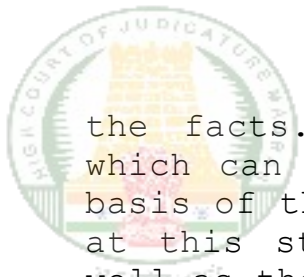
5. The learned counsel for the petitioner submitted that no offence is made out as per the Charge Sheet. He also relied upon the Judgment of this Court in the case of **Jayaramanuju, K. V. Janakaraj**, reported in **1996 (I) CTC 470**, wherein this Court has held that to prove the offence under Section 294(b) I.P.C., mere utterance of abusive words are not sufficient and that there must be a further proof to establish that it was to the annoyance of others.

6. The learned counsel for the petitioner also relied upon another Judgment of this Court in the case of **R.Ramesh V. State**, reported in **(2010) 2 MLJ (Cr1) 12**, wherein, this Court has held that in the absence of any legal evidence to show that the words uttered by the accused annoyed others it cannot be said that the ingredients of offence under Section 294(b) I.P.C., are made out.

7. The learned counsel for the petitioner further relied upon the Judgment of this Court in the case of **Noble Mohandass V. State**, reported in **1988 (I) MLJ(Cr1.) 54**, wherein the learned Single Judge of this Court has held that when the allegation is that the husband came into the wife's house, the same will not constitute the commission of offence of trespass. None of the Judgments cited by the learned counsel for the petitioner can be applied to the facts and circumstances of the present case.

8. In this case, the allegation made in the complaint would certainly constitute the offence under Section 294(b), 448, 427 and 506(ii) I.P.C. It is stated in the complaint that the petitioner and other accused demolished the common wall which was in existence between the houses of the petitioner and the defacto complainant. The conduct of the petitioner cannot be excused as it is an act of criminal trespass, even if the wall demolished is the common wall. Similarly, the contention of the petitioner that the offence alleged against the petitioner will not come under Section 294(B) I.P.C., cannot be accepted.

9. Having regard to the scope of Section 482 of Cr.P.C., at this stage, this Court is not inclined to go into the details of the allegations. The petitioner in this case submitted that the complaint given was false and motivated for extraneous reasons. It is also stated that the ingredients of the provisions which are referred to in the Charge Sheet are not attracted having regard to



the facts. The petitioner cannot urge any contentious issues which can be resolved only at the time of trial. Merely on the basis of the version of the petitioner, this Court will not decide at this stage whether the allegations made in the complaint as well as the Charge Sheet are true or false.

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10. Having regard to the well settled principles, this Court is not inclined to interfere or find any legal ground to quash the criminal proceedings. Hence, the Criminal Original petition is dismissed.

11. The learned counsel for the petitioner however submitted that the petitioner's appearance may be dispensed with.

12. Considering the possibility of settlement in future, this Court is inclined to dispense with the personal appearance of the petitioner, unless or until his appearance is specifically required by an order of Court. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Records)

/True copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Uthamapalayam.

2. The Inspector of Police,
Cumbum North Police Station,
Theni District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO MR.A.K.Manickam, ADVOCATE IN SR No.75973

pmu

MK/JC/SAR-2/05.10.2017/3P/5C

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