

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

Crl.O.P.Nos.16919 and 16770 of 2011
and
Crl.M.P.Nos. 1 and 1 of 2011

Sivakumar ... Petitioner
(in Crl.O.P.No.16919/2011)

1.Sasikala

2.Kavitha ...Petitioners
(in Crl.O.P.No.16770/2011)

Vs.

1.The State, rep. By its
Sub-Inspector of Police,
Palladam Police Station,
Palladam, Tiruppur District.

2.Selvaraj
(2nd respondent is impleaded
as per the order dated 06.09.2018 in
Crl.MP.No.1799 of 2018 in
Crl.OP.No.16919 of 2011)

...Respondents
(in both Crl.OPs)

Common Prayer: These Criminal Original Petitions filed under
Section 482 of Cr.P.C. to call for the records relating to the
charge sheet filed in C.C.No.217 of 2011 on the file of Judicial
Magistrate, Palladam and quash with regard to the same as
illegal offence under Sec.506(ii) of IPC alone in so far as the
petitioner is concerned.

For petitioners : Mr.N.Manokaran
(in both Crl.OPs)
For Respondents : Mr. T.Shunmugarajeswaran
(in both Crl.OPs) Government Advocate (Crl.Side)
For R1
: Mr.P.M.Duraiswamy for R2

C O M M O N O R D E R

Criminal Original Petition No.16919/2011 has been filed by the Accused Nos.2 and 3 and Criminal Original Petition No.16770/2011 has been filed by the Accused No.1 to quash the proceedings against them in C.C.No.217 of 2011 on the file of the Judicial Magistrate, Palladam.

2.The learned counsel for the petitioners has submitted that the first respondent has filed a charge sheet stating that the accused no.1 has committed offences punishable under Sections 448, 427 and 506(ii) I.P.C and accused no.2 & 3 committed offences punishable under Sections 448 and 427 IPC. He further submitted that for the offence punishable under Section 448 IPC, the punishment prescribed is one year imprisonment and for the offence punishable under Section 427 IPC is two years imprisonment. He further submitted that as per Section 468 Cr.P.C., no Court, shall take cognizance of an offence, after expire of three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. He further submitted that since in this case as per the charge sheet, the alleged occurrence took place on 24.05.2008, whereas the charge sheet was filed on 23.06.2011 i.e. after four years, the case is barred by limitation against the accused no.2 & 3 are concerned.

3.The learned counsel for the petitioners further submitted that though the accused no.1 was charge sheeted for the offences punishable under Sections 448, 427 and 506(ii) IPC, the complaint and the statements recorded under Section 161(3) Cr.P.C do not disclose the ingredients of the offence punishable under Section 506(ii) IPC. He further submitted that in the complaint as well as in the 161 (3) Cr.P.C., statement, the defacto complainant has not expressed any fear for his life and therefore the offence under Section 506(ii) IPC is not attracted. He further submitted that once the offence under Section 506(ii) IPC is not made out, the Charge sheet against the accused no.1 also barred by limitation. In support of the said contentions, he relied upon the following decisions :

1.Rajan vs. State rep. By Inspector of Police, Central Crime Branch, Tiruppur, [(2008) 3 MLJ-(Crl) 776].

2.Sri Krishna Tiles and Potteries (Madras) Pvt. Ltd. vs. Inspector of Police, Team-IV, Central Crime Branch Chennai. [2006 (2) CTC 642].

3.Manik Taneja and another vs. State of Karnataka and another [(2015) 7 Supreme Court Cases 423].

4.The learned Government Advocate (Crl. side) appearing for the first respondent has submitted that the charge sheet was

signed by the Sub-Inspector of Police on 30.05.2008 itself and immediately thereafter, it was presented before the court of Judicial Magistrate, Palladam, but the learned Judicial Magistrate has taken the case on file only on 28.06.2011 and therefore, the delay has been committed only by the Court in taking it on file and for that the first respondent cannot be blamed. He further submitted that the accused 2 & 3 were absconding and hence, the period of absconding has to be excluded under Section 470 (4) of Cr.P.C. He further submitted that the complaint and 161(3) statement of the defacto complainant would clearly disclose a prima facie case with regard to the offences punishable under Sections 448, 427 and 506(ii) IPC and therefore, the proceedings against the petitioners herein cannot be quashed.

5.The learned counsel for the second respondent has submitted that the allegations made in the complaint and also in the 161(3) statement of the witnesses would clearly disclose that the offence punishable under Section 452 IPC is made out and for the said offence the punishment prescribed is 7 years imprisonment and therefore, the case is not barred by limitation.

6.In Rajan vs. State rep. By Inspector of Police, Central Crime Branch, Tiruppur, (supra) this Court, in paragraph Nos. 8 and 9 has observed as follows:-

"8.The next allegation raised against the petitioner is alleged criminal intimidation. It is fairly submitted by the learned Additional Public Prosecutor that there is no whisper about the criminal intimidation in the complaint and such allegation was made subsequently during the course of examination of witnesses. It is seen that a bald and vague allegation of criminal intimidation was made only at a later stage and the same is nothing but an after-thought.

9.This Court in a decision in Noble Mohandass v. State 1989 CrL.L.J.669:(1988) 1 MLJ (CrL)54 has held as follows:

"further for being an offence under Sec. 506 (2) which is rather an important offence punishable with imprisonment which may extend to seven years, the threat should be a real one and not just a mere word when the person uttering it does exactly mean what he says and also when the person at whom threat is launched does not feel threatened actually.

In fact P.W.1. When she filed the complaint to the police office, did not express any fear for her life nor asked for any protection."

7. In this case, the defacto-complainant has clearly stated in his complaint that the accused persons had criminally trespassed into his house and caused damage to the T.V, Almirah, Clock, Gas Cylinder and when the same was questioned by him, the accused No.1, took a wooden log and criminally intimidated by saying that he will finish him and bury there itself. He further stated that he immediately raised alarm and on hearing the same the other witnesses came there and on seeing them, the accused persons ran away. The same statement has been made in the statement recorded under Section 161 (3) Cr.P.C. also. So it is clear that unless the witnesses came there something would have happened. In the aforesaid case nothing was mentioned in the complaint with regard to criminal intimidation and only subsequently during investigation, a bald and vague allegation of criminal intimidation was made. Whereas in this case, in the complaint itself the defacto complainant has clearly stated with regard to the criminal intimidation made by the accused No.1. Therefore, aforesaid decision will not help the petitioners herein.

8. In Sri Krishna Tiles and Potteries (Madras) Pvt. Ltd. vs. Inspector of Police, Team-IV, Central Crime Branch Chennai, (supra) it has been held thus:

"19. The total amount received from the prospective purchasers and the existing liability have been clearly incorporated in the deed of termination agreement. The entire liability of M/s. Sai Krishna properties and Facilitators (P) Ltd., has been taken over by the first accused company. There is nothing wrong in settling the advance amounts received from the prospective purchasers as the entire scheme promoted by the company did not take off as expected. If the amount had not been settled, the accused would have definitely faced criminal proceedings at the instance of the prospective purchasers. Therefore, the question of cheating, as alleged by the complainant, does not arise for consideration in this case. Very bald allegation has been made that on enquiry the accused 1 to 3 threatened to kill him. Such a stock version cannot be given much credence at all."

9. In that case very bald allegation has been made by the complainant that on enquiry the accused 1 to 3 threatened to kill him. But in this case, as already pointed out that the allegations made in the complaint would clearly attract Section 506 (ii) IPC. Therefore, the aforesaid decision also will not be applicable to the facts of this case.

10. In Manik Taneja and another vs. State of Karnataka and another (supra) the Hon'ble Supreme Court in Para-12 has observed as follows:-

"12. In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of "criminal Intimidation". The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the mind of the second respondent causing obstruction in discharge of his duty. As far as the comments posted on Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of the appellants posting a comment on Facebook may not attract ingredients of criminal intimidation in Section 503 IPC."

11. From the aforesaid decision it is clear that it is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of "criminal intimidation", that the threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work and that mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of the section 506(ii) IPC. In this case, as already pointed out that in the complaint as well as in

the statement recorded under Section 161(3) Cr.P.C. the defacto complainant has clearly stated that the first accused demanded partition and threatened him by showing wooden log that he will finish him and bury there itself and hence, he raised alarm and on hearing the same, the witnesses came there and on seeing them the accused persons ran away. Therefore, this Court is of the view that the allegations made in the complaint would prima facie satisfy the essential ingredients of the Section 506(ii) IPC. So, the proceedings against the accused No.1 cannot be quashed.

12. Now let us see whether the case against the accused 2 and 3 can be quashed on the ground of barred by limitation. At this juncture it would be relevant to refer to section 468 Cr.P.C., which reads thus:-

(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be- (a) six months, if the offence is punishable with fine only; (b) one year, if the offence is punishable with imprisonment for a term not exceeding one year; (c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."

13. From the reading of sub section (3) of section 468 Cr.P.C, it is clear that for the purpose of the said section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to offence which is punishable with more severe punishment or, as the case may be most severe punishment. In this case as already pointed out that there is a prima facie case to proceed against the accused No.1 under Section 506(ii) IPC. The punishment prescribed for the said offence is 7 years imprisonment. The case against the petitioners 2 and 3 alone cannot be considered separately for the purpose of limitation. Since all the three

accused are tried jointly, in view of sub-Section (3) of Section 468 Cr.P.C. the case is not barred by limitation against the accused nos.2 and 3 also.

14.For the above said reasons, the aforesaid petitions, are liable to be dismissed. It is open to the petitioners to contest the case before the trial Court.

15.In the result these petitions are dismissed. The trial Court is directed to dispose of the case on merits uninfluenced by the observations made by this Court in this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate,
Palladam.

2. Sub-Inspector of Police,
Palladam Police Station,
Palladam,
Tiruppur District.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.M.Duraiswamy, Advocate, S.R.No.73845

+1cc to Mr.R.Nilavazhagan, Advocate, S.R.No.74528

Cr1.O.P.Nos.16919 and 16770 of 2011

CP(CO)
GSP(19/12/2018)

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