

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.09.2018

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.10996 of 2011

and

M.P.No.1 of 2011

1.L.Natarajan,
S/o.Lingi Chettiyar.

2.N.Malliga,
W/o.L.Natarajan.

3.N.Vimalamani,
D/o.L.Natarajan.

4.B.S.Sudandira Veeran @ Veeran,
S/o.Late.Sokkan Chettiyar.

5.R.Velliyangiri,
S/o.Late.Rangappan Chettiyar.

... Petitioners/Accused Nos.1 to 5

Vs.

T.Gunasundari,
W/o.S.Thiyagarajan.

...Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the private complaint in C.C.No.47 of 2011 on the file of the Judicial Magistrate No.2, Udumalpet and quash all further proceedings thereon against the petitioners/accused Nos.1 to 5.

For Petitioners: Mr.G.Saravanan

For Respondent : No Appearance

W E B C O P Y
O R D E R

This Criminal Original Petition is filed by the petitioners herein, who are arrayed as accused and facing trial in C.C.No.47 of 2011, on the file of the Judicial Magistrate No.2, Udumalpet, seek quashing of all further proceedings against them. The petitioners have received summons on 30.04.2011 to appear on 13.05.2011 to answer the charges for offence under Sections 147, 448, 341 and 323 of the Indian Penal Code as against the petitioners/accused Nos.1 to 3 and for offence under Sections

147, 448, 341 and 327 of the Indian Penal Code as against the petitioners/accused Nos.4 and 5.

2.The facts relating to the filling of the case in C.C.No.47 of 2011 before the learned Judicial Magistrate No.2, Udumalpet are as follows:-

The respondent herein namely Gunasundari had filed a private complaint against the petitioners. According to the complaint, the respondent is residing at Udumalpet. Her sister Vasantha is residing at Oothukuli, Pollachi. Vasantha's son Karthick was married to one Vimalamani, 3rd petitioner on 19.11.2009, the respondent was in fore front in conduct of the marriage. According to the complaint, the 3rd petitioner is a divorcee, which fact was suppressed at the time of marriage. After the marriage the 3rd petitioner and her husband Karthick were residing at Pollachi during that time there arose some misunderstandings and difference of opinion and hence they started living separately. In the meanwhile, the said Karthick is said to have filed a petition seeking divorce of his marriage from the 3rd petitioner. This strained the relationship between the respondent sister's family and the 3rd petitioner's family. Further, the petitioners approached the respondent several times to clear the misunderstanding and bring peace between the 3rd petitioner and Karthick. The respondent refused to do so. Hence, there was animosity between the petitioners and the respondent. According to the respondent, the petitioner family was under the impression that on the advice and at the instance of the respondent, her sister and her son were acting against them. The 1st and 2nd petitioners are the father and mother of the 3rd petitioner and the 4th and 5th petitioners are their relatives.

3.In such situation, on 07.02.2001 at about 06.00.p.m, when the respondent was at her home along with family members namely her husband Thiyagarajan, her son Hariharan and daughter Vinotha, all the petitioners trespassed into their house. When the husband of the respondent questioned their act, before they could realize what is happening, the 3rd petitioner pulled down the respondent by her hair and kicked her. When the husband of the respondent tried to intervene, the 1st and 2nd petitioners caught hold of him wrongfully restrained and did not allow him to move, 4th and 5th petitioners slapped the respondent and her husband several times. It is her further statement that 1st and 2nd petitioners twisted the hands of the respondent and threatened her by saying that unless she got money from her sister's family for damaging and spoiling the life of the 3rd petitioner, she would not be spared otherwise the respondent and her family would be done away. On hearing their hue cry, their neighbours viz., Chandrasekaran and Gunasekaran came and rescued the respondent and her family. Even at that time, the

petitioner had stated that the respondent should get money from her sister's family and they would not leave anybody. Further, when the neighbours questioned the petitioners as to why they are creating trouble with the respondent, the petitioners informed that Karthick, the respondent sister's son is said to have stated that, on the advice of the respondent he is seeking divorce from the 3rd petitioner. Hence the petitioners are taking revenge with the respondent. The further contention in the complain is that the next day i.e on 08.02.2011, respondent had gone to Gomangalam Police Station to lodge a complaint and requested the police to send her for medical treatment, but the police refused stating that, there was no injury on her and therefore it was not necessary for her to go to the hospital. But, they promised that they will conduct an enquiry on her complaint. Thereafter nothing happened. Hence the respondent sent a representation to the Superintendent of Police, Tiruppur and Deputy Superintendent of Police, Udumalpet on 23.02.2011. Even thereafter no action was taken and hence, the respondent preferred a private complaint against the petitioners.

4.Since, summons were sent to the petitioners on the private complaint filed before the learned Judicial Magistrate No.2, Udumalpet, by the respondent, they are before this Court in this Criminal Original Petition for quashing of all further proceedings against them.

5.Notice to the respondent through Court was ordered, which was received by the respondent/complainant on 09.07.2017. On 10.07.2017 the acknowledgement in proof of receipt of notice has been received by the Sub Inspector of Police, Thali Police Station, Tiruppur District, who had forward the same to the learned Judicial Magistrate No.2, Udumalpet, who in turn had forwarded to the Assistant Registrar (Criminal Side) High Court, Madras in D.No.422 of 2017, dated 12.07.2017. Thus the respondent/complainant had been served with the notice of this original petition, despite the same, she failed to appear before this Court. It is also pertinent to note that the respondent/complainant had refused to receive the private notice sent by the counsel for the petitioners and that an Affidavit of Service had been filed. The name of the respondent/complainant is printed in the cause list.

6.Despite taking all efforts, the respondent/complainant failed to appear before this Court or engage a counsel. Keeping this Criminal Original Petition further pending would only amount to piling up of the cases without any progress and hence, this Court decides to dispose of the Criminal Original Petition on merits.

7.The contention of the learned counsel for the petitioners/accused is that the marriage between the 3rd petitioner and her husband was not cordial and that the 3rd petitioner was subjected to dowry harassment, she preferred a case under the Domestic Violence Act, 2005 before the learned Judicial Magistrate No.2, Udumalpet and that the present proceedings before the learned Judicial Magistrate No.2, Udumalpet is only a counterblast of the dowry harassment case filed by the accused. In other words, the present complaint is filed by the respondent/complainant to wreck vengeance with an ulterior motive.

8.Further, the learned counsel for the petitioners contended that if the complaint is taken as a whole no case is made out further, on going by complainant's own admission in the complaint, she had not sustained any injury or there was no use of abusive language, compelling initiation of any complaint against the accused. He would further submit that even if the entire complaint is considered to be true, then also the case would fall under exception of under Section 95 of the Indian Penal Code. In support of his contention he had relied on the decision of the Hon'ble Apex Court in the case of Mrs.Veeda Menezes Vs. Yusuf Khan Haji Ibrahim Khan and another reported in 1966 AIR SC 1773.

9.The learned counsel for the petitioners had relied upon the following decisions of this Court:

- 1) R.Thamaraiselvan Vs. State in CrI.O.P.No.14918 of 2017 dated 10.08.2017;
- 2) Chandran Vs. State in CrI.O.P.No.30707 of 2006 dated 27.07.2009; and
- 3) Rajendran V. State in CrI.O.P.No.21457 of 2010 dated 15.11.2016.

10.The learned counsel appearing for the petitioners submits that Section 95 of the Indian Penal Code is applicable if the act causes harm or it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm should not be statuted on a restricted meaning and the harm is inclusive of "Physical injury". Further, according to the learned counsel the nature of allegations in the F.I.R can at best, be termed as empty threat and that mere uttering of words would not attract the offence under Section 506(i) of Indian Penal Code.

11.From the facts and circumstances, it is clear that there was a wordy quarrel between the petitioners and respondent family, which is nothing, but trivial in nature. Further, there

is no injury reported either on the respondent/complainant or her family members. The utterance of words are momentary nothing more. By following the decisions rendered by this Court and the Hon'ble Apex Court, and by applying the "doctrine of triviality", this Court feels that the complaint filed by the complainant is only an emotional one.

12. In view of the aforesaid discussions, this Criminal Original Petition stands allowed and the case in C.C.No.47 of 2011 on the file of the learned Judicial Magistrate No.II, Udumalpet stands quashed and consequently, the connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CO)

True Copy

Sub-Assistant Registrar

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To

1. The Judicial Magistrate Court No.2,
Udumalpet.
 2. Do Through The Chief Judicial Magistrate
Coimbatore District.
- +1 CC to Mrs.R.Meenalochini, Advocate sr 64446.

Crl.O.P.No.10996 of 2011

EV(CO)
SP(15/03/2019)

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