

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.01.2018

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CrI.O.P No.27284 of 2010
and
M.P.Nos.1 and 2 of 2010

1.J.Halan
2.R.Raman

... Petitioners

vs.

1.State rep. by
Inspector of Police,
Kotagiri Police Station,
The Nilgiris 643 217.

2.K.Dharman

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the entire records pertaining to charge sheet in C.C.No.35 of 2010, on the file of the learned Judicial Magistrate, Kothagiri and quash the same.

For Petitioners : Mr.L.Mouli

For Respondents : Mr.B.Ramesh Babu (for R1)
Government Advocate (CrI.Side)

No Appearance (for R2)

JUDGMENT

The petitioners prefer the instant Criminal Original Petition invoking the inherent power of this Court under Section 482 of CrPC seeking to quash the Charge Sheet in C.C.No.35 of 2010 on the file of the Learned Judicial Magistrate, Kothagiri. The petitioners' case is that the above charge sheet came to be filed laying charges of offence under Section 341 and 506 (i) IPC against them, in pursuance of a false and malafide complaint dated 09.04.2010 preferred by the 2nd respondent namely Mr.K.Dharman, which came to be registered as Crime No. 152 of 2010 on the file of the 1st respondent police.

2. According to the petitioners the above complaint of 2nd respondent as well as the corresponding final report filed is patent illegality and sheer abuse of process of law, since the allegations leveled against them are obviously absurd and fanciful. Hence they seek for quashing the criminal proceedings thereto in C.C.No.35 of 2010.

3. The factual matrix involved in the case is that the petitioners as well as the 2nd respondent defacto complainant are native of Jackanrai Village, Nilgiris District. The above complaint dated 09.04.2010 reveal to be preferred by the 2nd respondent alleging that the petitioners herein who are the head of two village Panchayats at that relevant point of time in the year 2010, have prevented the co-villagers from participating in the funeral of the 2nd respondent's father who died on 21.03.2010. The sum and substance of allegation is that they prevented the villagers from attending the 2nd respondent's father's funeral ceremonies by intimidating with the threat of Ex-communication. Therefore the above complaint was filed by the 2nd respondent and on investigation the 1st respondent charge sheeted the above C.C.No.35 of 2010 under Section 341 and 506(i) IPC against the petitioners.

4. According to the petitioners, complaint on hand is an utter false and the same was lodged due to some previous enmity with the 2nd petitioner and with a malafide intention to harass the petitioners. They never involved in any misdeeds as averred in the complaint. In fact the 2nd respondent family members very often indulged in quarreling for petty matters with the co-villagers. They never obstructed or prevented any person from attending the funerals of the 2nd respondent father and the story is absolutely fanciful projected for the purpose of harassing the petitioners.

5. I heard Mr.L.Mouli, learned counsel for the petitioners and Mr.B.Ramesh, learned Government Advocate (Criminal Side) for the 1st respondent, and there is no representation on behalf of the 2nd respondent and perused the entire records.

6. For better appreciation of the case on hand this Court hereunder extracts the relevant Sections of IPC:

"Section 341 - Punishment for wrongful restraint
- Whoever wrongfully restrains any person shall be

punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both."

7. Therefore to hold a person guilty and convict to undergo a punishment under section 341 of IPC, he should have committed an offence of Wrongful restraint, which is defined under section 339 of IPC, running as follows:

"Section 339 - Wrongful restraint.—Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person."

8. From the reading of above provisions, it is needless for this Court to say that to attract an offence under Section 341 there should be a wrongful restraint. Such restraint may be an obstruction or prevention of a person from proceeding any direction in which that person has right to proceed.

9. Now coming to the case on hand, this Court find that excepting an averment that the petitioners verbally by instructions/intimidations have prevented the co-villagers from attending the funerals of the 2nd respondent father, there is no averment to the effect that there was any physical force used or restraint/obstruction made by the petitioners physically. In such circumstance the question now arise before this Court is as to whether a verbal prohibition amount to an obstruction and whether such threat of ex-communication alleged by the 2nd respondent is an "injury" within the meaning of Indian Penal Code, which is a punishable offence.

10. In this context this Court likes to refer to its earlier decisions made in the matter of

(1) Madala Peraiah and Others Vs. Voruganti Chendriah reported in 1954 CrL.L.J (Mad) 283, wherein it was held as follows:

"The offence of wrongful restraint, as has been pithily put, is linear in its scope; while wrongful confinement is circular in its character. Wrongful restraint is keeping a man out of a place where he wishes to be and has a right to be. The following illustrations given in the Original Draft Code will elucidate the meaning of this section:

(a) A builds a wall across a path along which Z

has a right to pass. Z is thereby prevented from passing. A wrongfully restrains Z.

(b) A illegally omits to take proper order with a furious buffalo which is in his possession and thus voluntarily deters Z from passing along a road along which Z has a right to pass. A wrongfully restrains Z.

(c) A threatens to set a savage dog at Z if Z goes along a path by which Z has a right to go. Z is thus prevented from going along the path. A wrongfully restrains Z.

(d) In the last illustration if the dog is not really savage but if A voluntarily causes Z to think that it is savage and thereby prevents Z from going along the path A wrongfully restrains Z.

From these illustrations it will appear that a person may obstruct another by causing it to appear to that other that it is impossible, difficult or dangerous to proceed as well as by causing it actually to be impossible, difficult or dangerous for that other to proceed. The obstruction must be physical. A verbal prohibition or remonstrance does not amount to such obstruction. The offence is the abridgment of the liberty of a person against his will".

(2) 1933, MWN 736, Arumuga Mudaliar Vs. T.M.T.Muthiah Mudaliar, wherein it was held as follows:

"If the accused have power, according to caste customs, to excommunicate, it is not an 'injury' to threaten excommunication. If, as the petitioner contends, the accused have no power to pronounce a sentence of excommunication (in the strict sense of that word) then it is clear that in threatening to excommunicate they were merely threatening social boycott. I cannot see that a social boycott is a threat to 'injury' as defined in I.P.C".

11. Thus on a conjoint reading of the above legal propositions, this Court is of the opinion that even if the averment projected by the 2nd respondent is imagined to be true, the same do not attract the offence under Section 339 of IPC.

12. In so far as offence under Section 506(i) of IPC is concerned, it is not the case of 2nd respondent that he was subjected to intimidation, whereas it is his case that the co-villagers were intimidated by petitioners. However none of the

alleged villagers have preferred any complaint against the petitioners. Such being the case, this Court has no hesitation to quash the Impugned Charge Sheet by allowing this Criminal Original Petition in view of the facts involved in the case and the legal prepositions stated supra.

13.In the result, this Criminal Original Petition is allowed and the charge sheet in C.C.No.35 of 2010, on the file of the learned Judicial Magistrate, Kothagiri, is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS III)

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Sub Asst. Registrar

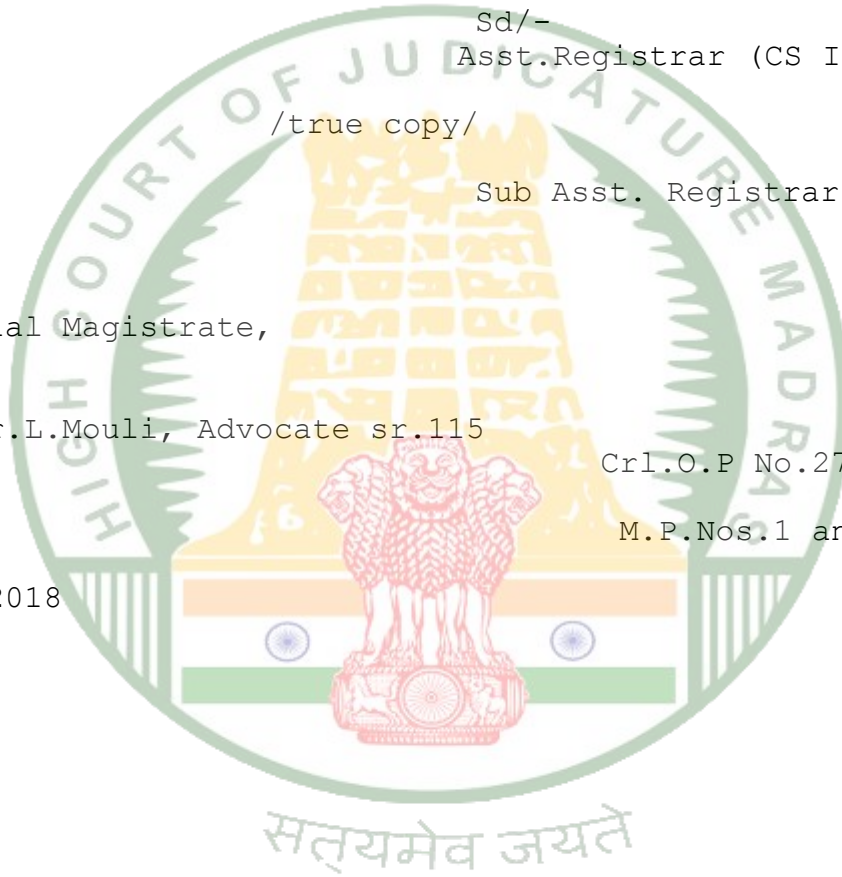
To

The Judicial Magistrate,
Kothagiri.

+1cc to Mr.L.Mouli, Advocate sr.115

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