

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.06.2018

CORAM:

THE HON'BLE MRS.JUSTICE R. HEMALATHA

Crl.O.P.No.27849 of 2012 and

M.P.No.1 of 2012

K. Kokilavani ... Petitioner/Accused

/Vs/

1.State represented by :

Inspector of Police,
Sangagiri Police Station,
Salem District.
(Crime No.820 of 2009)

2. A.K. Illamchezhan

(R2 is impleaded as per the order of the
Hon'ble Court dated 06.09.2017 made
in Crl.M.P.No.11088 of 2017) Respondent/Complainant

PRAYER: Criminal Original Petition filed under section 482 of
Criminal Procedure Code, to call for the records pertaining to
C.C.No. 111 of 2012 on the file of the Judicial Magistrate No.I,
Sangagiri, Salem District and to quash the entire proceedings as
against the petitioner.

For Petitioner/Accused: M/s. T.K.S.Bharathy Anandraj

For Respondent-1/
Complainant

: Mr.T. Shanmuga Rajeshwaran
Government Advocate (Crl. Side)

For Respondent-2/
Complainant

: Mr.N.Manokaran

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O R D E R

The petitioner has filed the present petition under
Section 482 of the Criminal Procedure Code, to call for the
records pertaining to the case in C.C.No.111 of 2012 on the file
of the Judicial Magistrate No.I, Sankagiri, Salem District and
to quash the entire proceedings initiated against her.

2. The first respondent police, Sankagiri Police Station received a complaint from the defacto Complainant on 20.08.2009 which reads that the petitioner herein uttered the following words "நீயாடா என் கணவன் நீயாடா என்னுடன் குடும்பம் நடத்தினாய்" and also made an attempt to slap him with a chapel. The complaint further reads that the petitioner herein uttered the words "என்றைக்கு இருந்தாலும் உன்னை விடமாட்டேன் ஒரு கை பார்த்துக்கொள்கிறேன்". The first respondent police, based on the said complaint registered an FIR against the petitioner in Crime No.820 of 2009 for the alleged offences punishable under Sections 294 (b), 355 and 506 (ii) IPC on the same day. After completing investigation, a final report is filed against the present petitioner/accused for the aforesaid offences. The learned Judicial Magistrate No.I, Sankagiri, took cognizance of the offences under Sections 294(b), 355 and 506(ii) IPC and issued summons to the accused (petitioner).

3. The learned counsel appearing for the petitioner/accused would contend that the first respondent police, Sangagiri Poilce Station registered the FIR against the petitioner, immediately, on receipt of the said complaint without even holding any preliminary enquiry. He would further contend that the petitioner/accused has not committed any of the offences as alleged by the prosecution and that for constituting the offences punishable under Sections 294(b), 355 and 506(ii) IPC, there are no sufficient materials on record.

4. Per contra, the learned counsel appearing for the defacto Complainant contended that the defacto complainant is a practising advocate and that since he appeared on behalf of the husband of the accused, the accused uttered obscene words in front of several persons and that she had also committed the offences punishable under Sections 355 and 506 (ii) IPC.

5. He further relied on the decision of the Hon'ble Supreme Court in Dineshbhai Chandubhai Patel v. State of Gujarat and Ors reported in [2018 (3) SCC 104] and contended that the High Court, while exercising its inherent jurisdiction under Section 482 Cr.P.C. should first examine as to whether the factual contents of the FIR disclose any prima facie cognizable offences or not and that the High Court cannot act as an Investigating Agency nor can exercise the powers like an appellate court.

6. At this juncture, it would be relevant to extract the Sections 294(b), 355 and 506(ii) IPC, which reads as follows:

(1) 294(b) IPC: Sings, recites or utters any obscene song, ballad or words, in or near any public

place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine or with both."

(2) 355 IPC: Whoever assaults or uses criminal force to any person, intending thereby to dishonour that person, otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

(3) 506(ii) IPC: Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; If threat be to cause death or grievous hurt, etc.— and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

A careful perusal of the complaint shows that none of the ingredients of Section 294(b), 355 and 506(ii) IPC are attracted to initiate criminal proceedings against the petitioner.

7. The learned counsel appearing for the Defacto Complainant would contend that the key witnesses in their 161 Cr.P.C., statement before the police had averred that the accused threatened the defacto complainant that she would kill him. At this juncture, it is pertinent to point out that in the complaint given by the defacto complainant, nowhere, he has stated that the petitioner/accused threatened him that she would kill him. The parameters for the interference with a criminal proceedings by the High Court in exercise of jurisdiction under Section 482 of the Code are well known. One of the grounds on which stage interference is permissible is that the allegations contained in the complainant's petition even if given face value and taken to be correct in their entirety, commission of offence is not disclosed. The High Court also can interfere where the action on the part of the complainant is malafide. A perusal of the records shows that two days prior to the date of complaint, the petitioner/accused had addressed a letter to the Sub-Judge, Sankagiri, contending that the defacto complainant has verbally abused her willifying her character and thereby trying to cause prejudice when the process of matrimonial dispute was going on. It is clear from the above letter that she was provoked intentionally by the defacto complainant who was only the legal

counsel for the husband and had no necessity to enter into any verbal dual with her. It is also evident from the contents of the complaint none of the sections mentioned in the FIR and final report had been made out and it is a fit case which deserves quashing of the entire proceedings in C.C.No.111 of 2012 on the file of the learned Judicial Magistrate No.I, Sankagiri, Salem District.

8. In the result, the Criminal Original Petition is allowed and the entire proceedings in C.C.No. 111 of 2012 on the file of the Judicial Magistrate No.I, Sangagiri, Salem District, is quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-ix)

//True Copy//

Sub Assistant Registrar

msm

To:

1. The Inspector of Police,
Sangagiri Police Station,
Salem District.
2. The Judicial Magistrate 1,
Sangagiri, Salem
3. The Public Prosecutor,
High Court, Madras.

+lcc to Mr.N.MANOKARAN, Advocate, S.R.No. 35223

+lcc to Mr.TKS BHARATHY ANANDRAJ, Advocate, S.R.No. 34906

CrI.O.P.No.27849 of 2012

KS (CO)
TR(25/06/2018)

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