

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on 14.11.2018	Delivered on 20.11.2018
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CORAM:

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

CrI.OP No.5923 of 2017
and
CrI.M.P.No.4427 & 4428 of 2017

1.Vishnu Parthiban
2.Uvanesh
3.Sakkaravathi Thirumagan

..Petitioners

..Vs..

1.State by the Inspector of Police,
Kannankurichi Police Station,
Kannankurichi,
Salem City.
Crime No.192 of 2016

2.Devi

..Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in S.C.No.33 of 2017, on the file of the Sessions Judge, Mahila Court, Salem and quash the same.

For Petitioner : Mr.Swami Subramanian
Mr.A.Vinoth Kumar

For Respondents: Mr.M.Mohamed Riyaz, APP for R1

Mr.M.R.Thangavel for R 2

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ORDER

This Criminal Original Petition has been filed challenging the proceedings pending in S.C.No.33 of 2017, on the file of the Sessions Court, Mahila Court, Salem.

2.It is seen from records that the 1st respondent Police has filed a Final Report against the petitioners for an offence under Sections 294 (b), 307, 506 (ii) IPC and

Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act [hereinafter referred as 'the Act'], and the same has been taken cognizance by the Court below. The case of the prosecution is that there is a land dispute pending between the family of the Complainant and the family of the accused. While so, on 04.05.2016, at about 11.15 p.m., when the de-facto Complainant was in her house, A-1 entered into a quarrel with her and also threatened and abused her in a filthy language. He also attempted to stab the 2nd respondent with a knife and the 2nd respondent escaped from the attack by moving away and she sustained a simple injury in her right hand. It is a further case of the prosecution that A-2 and A-3 also attacked the de-facto Complainant. Thereafter, the de-facto Complainant locked herself inside the house. A Complaint was given by the 2nd respondent on 05.05.2016 at about 12.30 a.m., and the respondent Police registered an FIR against the petitioners.

3.The learned counsel for the petitioners would submit that the de-facto Complainant's husband had come with henchmen and had created a ruckus in a temple festival and the respondent Police had registered an FIR in Cr.No.194 of 2016 against the husband of the 2nd respondent and 3 others and they have also been arrested. Keeping this in mind, a false Complaint has been given by the 2nd respondent against the petitioners. Therefore, the learned counsel would submit that the entire Complaint is attended with malafides.

4.The learned counsel would further submit that the entire reading of the Complaint, the Final Report and the statement given by the witnesses, reveals the fact that the de-facto Complainant sustained a simple injury in the right hand and the so-called knife was not even recovered or seized by the Police in the course of investigation and therefore, the version of prosecution that the de-facto Complainant was attacked with a knife is a total falsehood. Therefore, the learned counsel would submit that no offence has been made out under Section 307 of IPC. The learned counsel would further submit that no offence under Section 294 (b) has been made out, since the incident had taken place in the house of the 2nd respondent, and not in a public place. The learned counsel also submitted that Section 4 of the Act is also attracted in this case, since the alleged incident did not take place in public view, but inside the house of the 2nd respondent. Therefore, the learned counsel would submit that the proceedings before the Court below is liable to be quashed.

5.The learned Additional Public Prosecutor would submit that there are prima facie materials against the petitioners for the Court below to frame charges and proceed further with the trial and at this stage, this Court should not interfere with the proceedings. The learned Additional Public Prosecutor further

submitted that all the grounds raised by the petitioners are factual in nature and the same has to be established only in the course of proceedings, since it involves appreciation of evidence. Therefore, the learned Additional Public Prosecutor sought for a dismissal of the petition.

6.The learned counsel for the 2nd respondent also adopted the arguments of the learned Additional Public Prosecutor. The learned counsel submitted that there are sufficient materials against the petitioners to frame charges under Sections 294 (b), 307, 506 (ii) IPC and Section 4 of the Act.

7.This Court has carefully considered the submissions made on either side. This Court has carefully gone through the allegations made in the Final Report as well as the statements given by the witnesses. It is the specific case of the prosecution that there is a pending dispute between the parties. There is a prima facie material to show that an incident had taken place on 04.05.2016. The truth or otherwise of the incident cannot be gone into by this Court at this stage. Therefore, this Court is not in a position to quash the entire proceedings pending before the Court below.

8.What is required to be seen is whether based on the materials available on record, the offence under Sections 294 (b), 307, 506 (ii) IPC and Section 4 of the Act, has been made out.

9.In order to constitute an offence under Section 294(b) of IPC, the obscene act should have happened in a public place. In this case even as per the case of the prosecution, the incident had happened in front of the house of the de-facto Complainant. This has been spoken to by LW-1, LW-2 and LW-3. Specific words used by the 1st petitioner was also specifically stated by these three witnesses. Therefore, there is a prima facie material for the offence under Section 294 (b) of IPC, since the incident had not happened inside the house, but it had happened in front of the house. The front of the house according to the Observation Mahazar, is a street containing various other houses, apart from a temple and a water tank. Therefore, the ground raised in this regard by the learned counsel for the petitioners cannot be gone into at this stage and it involves appreciation of evidence.

10.Insofar as the evidence under Section 4 of the Act, the very same reasoning that has been given herein above, will apply Section 4 of the Act, is so widely worded that the place where the incident had taken place, will prima facie fall within the scope of Section 4. Therefore, this Court is not inclined to accept the ground raised by the learned counsel for the petitioners in this regard.

11.The next contention raised by the learned counsel for the petitioners is with regard to the charge for an offence under Section 307 of IPC. In this case, there is only material to show that the 2nd respondent sustained a simple injury on her right hand and she was treated as an out patient, and the same is clear from the statement given by LW-8 and LW-9, who are the doctors. Admittedly in this case, no knife has been recovered and except for the oral statement, there is nothing to show that the petitioners attacked the 2nd respondent with knife.

12.In order to attract the provisions of Section 307 of IPC, there must be an intention or knowledge to cause such bodily injury which if it had been completed, would have resulted in the murder of the person. Therefore, the three ingredients are the intention to commit it, the preparation to commit it and an attempt to commit it. If the first two ingredients are specified, an offence under Section 307 IPC will be made out, even if the attempt fails. Therefore, it is not essential that bodily injury capable of causing death should have been inflicted.

13.In this case, a cumulative reading of the entire materials available on record, at the best only makes out an offence under Section 323 of IPC and the prosecution has not made out an offence under Section 307 IPC. Therefore, this Court is of the considered view that the charge under Section 307 IPC against the petitioners is unsustainable.

14.With regard to the offence under Section 506(ii) IPC, there is prima facie material and this Court is not able to agree with the submission of the learned counsel for the petitioners, in this regard.

15. In fine, this Court is able to see prima facie materials for an offence under Section 294 (b), 323, 506 (ii) IPC and Section 4 of the Act. This Court, therefore interferes with the proceedings only insofar as the offence under Section 307 of IPC and charge under Section 307 of IPC is hereby set aside.

16.At present, the case is pending before the Sessions Judge at Salem, since cognizance has been taken under Section 307 IPC. In view of this order, the Court below is directed to see whether the charge for an offence under Section 294(b) 323, 506 (ii) IPC and Section 4 of the Act, can be tried by the same Court or it has to be send to the concerned Jurisdictional Magistrate Court. The Court below shall take a decision in this regard with regard to the jurisdiction.

17. There shall be a direction to the Court which proceeds with the trial in this case, to complete the proceedings within a period of three (3) months. The presence of the 3rd petitioner is dispensed with and he shall be represented by a counsel. The 3rd petitioner will appear before the concerned Court at the time of framing charges, at the time of questioning 313 of Cr.P.C and at the time of judgment. On all the other occasions, he shall be represented by a counsel. The learned counsel representing the 3rd petitioner shall cross examine the witness on the very same day, they are examined in chief. The 3rd petitioner shall not question the identity of the witnesses.

In the result, this Criminal Original Petition is partly allowed, to the extent indicated herein above, with the above directions. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

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Sub Assistant Registrar

KP

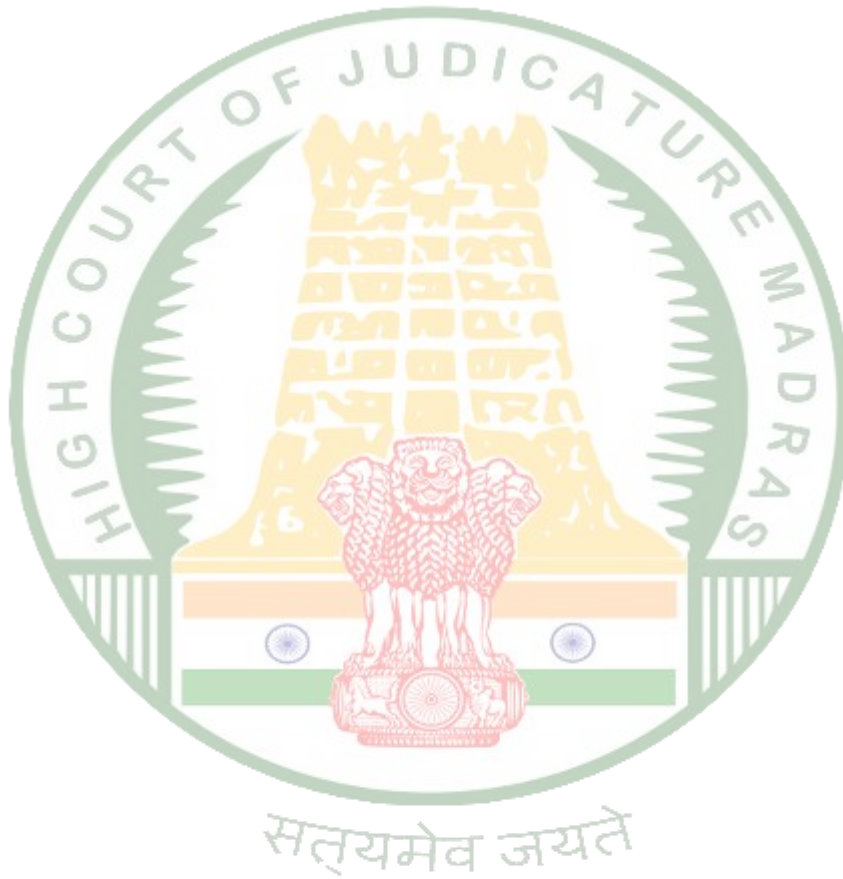
To

1. Sessions Judge,
Mahila Court, Salem.
2. The Inspector of Police,
Kannankurichi Police Station,
Kannankurichi, Salem City.
3. The Public Prosecutor,
High Court of Madras,
Madras.
4. The Judicial Magistrate,
Salem.
5. Do Thro The Chief Judicial Magistrate,
Salem.
6. The Section Officer,
Criminal Section,
High Court, Madras.

+lcc to Mr.Swami Subramanian, advocate sr.no.79670
+lcc to Mr.C.Anbu, Advocate sr.no.78969

Cr1.OP No.5923 of 2017

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nr 03/12/2018



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