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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD) .No.14281 of 2015

and

M.P(MD) .Nos.1 & 2 of 2015

and

Crl.M.P. (MD) No.1908 of 2018

1.Thangarajaiah

2.Jayasekar

...Petitioners/Accused Nos. 1 and 3

Vs.

1. The State of Tamil Nadu

Through the Sub-Inspector of Police

Karungal Police Station

Kanyakumari District

(Crime No.353 of 2012) ...1st Respondent/Complainant

2.Singarajan

...2nd Respondent/Defacto complainant

PRAYER: The Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code, to call for the records in C.C.No.60 of 2015 on the file of the Court of the learned Judicial Magistrate, Eraniel, and quash the same in so far as the petitioners are concerned.

For Petitioners : Mr.K.N.Thambi

For R1 : Mr.A.P.G.OHM Chairma Prabhu

Government Advocate (Crl.side)

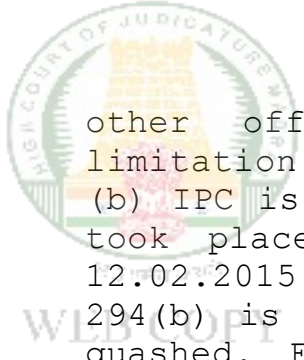
For R2 : Mr.C.Godwin

ORDER

The Criminal Original Petition has been filed to call for the records in C.C.No.60 of 2015 on the file of the Court of the learned Judicial Magistrate, Eraniel and quash the same in so far as the petitioners are concerned.

2. The petitioners have been charged for the offences punishable under Sections 294(b), 427 and 506(ii) IPC. The case of the prosecution is that on 05.06.2012 at about 5.00 a.m, when the defacto complainant proceeded to purchase milk, the petitioners and another scolded with filthy language and caused damages to the fencing and also threatened with dire consequences by showing deadly weapons.

3.The learned counsel appearing for the petitioners would contend that except the offence under Section 294(b) IPC, the



other offences are non-cognizable offences. The period of limitation for taking cognizance of the offence under Section 294 (b) IPC is one year. In the present case, the occurrence allegedly took place on 05.06.2012 and charge sheet has been filed on 12.02.2015. Therefore, the charge for the offence under Section 294(b) is hit by Section 468 Cr.P.C and the same is liable to be quashed. Further, he would submit that on the date of alleged occurrence i.e on 05.06.2012, the second petitioner herein was working as Special Grade Assistant Engineer and he attended duty on 'A' shift at about 5.56 a.m and returned to home at 2.10 p.m from Sivagangai Graphite Mines. Therefore, the second petitioner was not there at the place of occurrence namely Mavilai within the jurisdiction of Karungal Police Station and he prayed for quashing the criminal proceedings in C.C.No.60 of 2015.

4. Per contra, the learned counsel for the second respondent would submit that the plea of alibi cannot be considered by this Court that too exercising the power under Section 482 of Cr.P.C. Further, he would contend that there are specific averments made in the statement recorded under Section 161 Cr.P.C by the witnesses to connect the charges against the petitioners. Further he would submit that the grounds raised by the petitioners would be gone into in full-fledged trial and it cannot be considered now. Therefore, he prayed for dismissal of this petition.

5. The learned Government Advocate (Crl.side) appearing for the first respondent submitted that there are specific allegations as against the petitioners and another and trial has to be proceeded. Only during the trial, the points raised by the petitioner can be considered and he prayed for dismissal of the petition.

6. Heard the learned counsel appearing for the petitioner, learned Government Advocate(Crl.side) appearing for the first respondent and learned counsel appearing for the second respondent and perused the materials available on record.

7. Admittedly, the occurrence took place on 05.06.2012 and the charge sheet has been laid by the first respondent on 12.02.2015. The offence under Section 294(b) IPC is punishable with imprisonment for a term not exceeding one year. Therefore, the period of limitation for filing charge sheet is one year. But, there is delay in filing the charge sheet and therefore, the charge for the offence under Section 294(b) is directly hit by Section 468 Cr.P.C.

8. To attract offence under Section 294(b) IPC, there must be presence of specific words used by the accused persons. For the



(b) Obscene acts and songs - Whoever, to the annoyance of others --

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.

9. On a perusal of the First Information Report in Crime No.353 of 2012, it is seen that there are only vague and bald allegations of criminal intimidation and except that, the complainant has not stated any specific words uttered by the accused persons. The specific case of the second respondent/complainant is that filthy language was used by the petitioners and another. Beyond this, nothing has been stated by the complainant in the complaint. Whereas, in the statement recorded under Section 161 Cr.P.C the witnesses stated the specific words, which are uttered by the petitioners and another. But, according to the learned counsel for the petitioner, it is only after thought.

10. In this regard, the learned counsel appearing for the petitioners relied upon the judgments reported in **2015(4) CTC 109 (In S.Selva Kumar Vs. State through the Inspector of Police, All Women Police Station, Keelakarai, Ramanathapuram District)**.

11. The relevant portion of the said judgment is extracted hereunder:

9.As rightly submitted by the learned counsel appearing for the petitioner that it is the specific case of the defacto complainant that filthy language was used by the petitioner. Beyond this, she has not stated anything. She has not stated that other witnesses are eyewitnesses. It has been merely stated that the said occurrence is known to others, who is said to have been present in the place of occurrence. Even anyone of the witnesses have not spoken to about the specific words used by the petitioner. Thus, the complaint is totally vague, bereft of any materials, particular attracting the provisions of Section 294 (b). It is the further case of the defacto complainant that the petitioner only made a mere oral threat. Thus, he has not used any weapon or arm. Though one of the witnesses have stated that the petitioner has pushed the defacto complainant, there is no corroborative evidence to prove the same and that it is not even supported by the defacto complainant.



Therefore, the offence under Section 294(b) IPC is not at all attracted as against the petitioners. Though there are specific words are uttered by the petitioners and another in the statement recorded under Section 161 Cr.P.C, it is nothing but after thought to strengthen the case of the prosecution.

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12. The learned counsel appearing for the petitioners also relied upon the judgment reported in **2011 (3) SCC 351 (In Harshendra Kumar D Vs.Rebatilata Koley and others)**. The relevant portion of the said judgment is extracted hereunder:

25. In our judgment, the above observations cannot be read to mean that in a criminal case where trial is yet to take place and the matter is at the stage of issuance of summons or taking cognizance, materials relied upon by the accused which are in the nature of public documents or the materials which are beyond suspicion or doubt, in no circumstance, can be looked into by the High Court in exercise of its jurisdiction under Section 482 or for that matter in exercise of revisional jurisdiction under Section 397 of the Code. It is fairly settled now that which exercising inherent jurisdiction under Section 482 or revisional jurisdiction under Section 397 of the Code in a case where complaint is sought to be quashed. It is not proper for the High Court to consider the defence of the accused or embark upon an enquiry in respect of merits of the accusations. However, in an appropriate case, if on the fact of the documents - which are beyond suspicion or doubt - placed by the accused, the accusations against him cannot stand, it would be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court. In such a matter, for promotion of justice or to prevent injustice or abuse of process, the High Court may look into the materials which have significant bearing on the matter at prima facie stage.

26. Criminal prosecution is a serious matter; it affects the liberty of a person. No greater damage can be done to the reputation of a person than dragging him in a criminal case. In our opinion, the High Court fell into grave error in not taking into consideration the uncontroverted documents relating to the appellant's resignation from the post of Director of the Company. Had these documents been considered by the High Court, it



would have been apparent that the appellant has resigned much before the cheques were issued by the Company.

13. In the above judgment, the power to exercise jurisdiction under Section 482 Cr.P.C has been considered by the Hon'ble Supreme Court of India. When the documents were produced for consideration to exercise the power under Section 482 of Cr.P.C to quash the criminal proceedings, the High Court can consider the defence of the accused or embark upon an enquiry in rest of merits of the accusations. However, in a appropriate case, if on the face of the documents which are beyond suspicion or doubt placed by the accused, the accusations against him cannot stand it could be travesty of justice if the accused is relegated to trial and he is asked to prove his defence before the trial court. In such circumstances, the High Court can look into the materials which are significant bearing on the matter at *prima facie* stage. In the present case, in respect of the plea of alibi of the second petitioner that at the time of occurrence he was not present in the place of occurrence and he was attending duty, information has been furnished under the Right to Information Act from his Department. In order to prevent injustice or abuse of process, this Court looked into the documents produced by the petitioner, which have a bearing on the matter even at the initial stage and more relating to the person concerned. Being satisfied with the documents and by exercising jurisdiction under Section 482 of Cr.P.C, this Court holds that the offence under Section 294(b) IPC is not made out as against the second petitioner. In sofaras the offences under Sections 427 and 506(ii) IPC are concerned, they are non cognizable offences and as such, these are all also liable to be quashed.

14. In view of the above discussions, this Court is inclined to quash the criminal proceedings. Accordingly, the proceedings in C.C.No.60 of 2015 on the file of the Court of the learned Judicial Magistrate, Eraniel, as against the second petitioner is quashed. As far as the first petitioner is concerned, the learned counsel appearing for the petitioners would submit that the first petitioner, who is arrayed as the first accused died on 12.09.2015 and it is also confirmed from the death certificate issued by the Birth and Death Registrar, Mecode. Therefore, charges as against the first petitioner are abated.

15. In the result, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(P&A)



To

1. The Judicial Magistrate,
Eraniel.

2. The Sub-Inspector of Police,
Karungal Police Station
Kanyakumari District .

3. The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai.

+1cc to Mr.K.N.Thambi, Advocate Sr.No.91590

+1cc to Mr.C.Godwin, Advocate Sr.No.91701

CM

VB/PM/SAR3/23.11.2018/6P/6C

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and
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