



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.10.2018

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P. (MD)No.1921 of 2015

and

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

1.Ramasamy
2.Karthigai Ramasamy
3.Mariyammal
4.R.Mahalakshmi

... Petitioners / Accused

Vs

1.The Sub-Inspector of Police,
Thenkarai Police Station,
Theni District.
(Crime No.218 of 2014)

... Respondent / Complainant

2.Palanichamy

...Respondent / De-facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to call for the records in C.C.No.294 of 2014 on the file of the Judicial Magistrate, Periyakulam and quash the charge sheet and consequential further proceedings as against the petitioners.

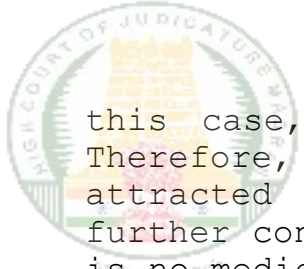
For Petitioners : Mr.D.Shanmugaraja Sethupathi
For R1 : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Crl. side)

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.294 of 2014, on the file of the learned Judicial Magistrate, Periyakulam, having been taken cognizance for the offences under Sections 448, 294(b), 323 and 506(i) I.P.C. There are totally four accused in this case and the petitioners are arrayed as Accused Nos.1 to 4. The charge Sheet is under challenge in this Criminal Original Petition.

2. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl. side) appearing for the second respondent.

3. The learned counsel appearing for the petitioners would submit that there are no specific overt act as against the petitioners herein. He further submits that there is absolutely no piece of evidence to attract the offences as against the petitioners herein. The offence under Section 294(b) I.P.C. would not attract against the petitioners herein as alleged by the prosecution. The petitioners entered into the de-facto complainant's house and abused him with filthy language. He further submitted that Section 294(b) I.P.C is attracted, if the occurrence had taken place in public. In



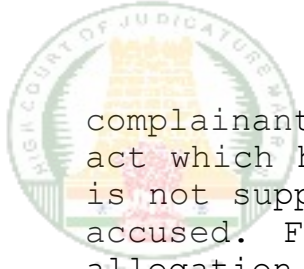
this case, the entire occurrence was happened inside the house. Therefore, the offence under Section 294(b) I.P.C. is not at all attracted as against the petitioners herein. However, he would further contend that to prove offence under Section 323 I.P.C. there is no medical evidence to substantiate the said charge. There is no injuries sustained by the de-facto complainant and as such, the charge under Section 323 I.P.C. is also not made out as against the petitioners herein. Insofar as the offence under Section 448 I.P.C. is concerned, the alleged offence took place in the house of the de-facto complainant as alleged by the prosecution. Whereas, the said house is owned by the petitioners herein and there is no trespass to the property belongs to the de-facto complainant. Therefore, he prays for quashment of the entire proceedings.

4. None appears on behalf of the de-facto complainant / second respondent herein.

5. The learned Government Advocate (Crl side) appearing for the first respondent would submit that there are specific allegations as against the petitioners herein and at the threshold, the criminal proceedings cannot be quashed and the charge framed against the petitioners have to be gone into a full-fledged trial and hence, he prayed for dismissal of the petition.

6. It is seen from the records that as far as the petitioners 1 to 3 are concerned, there are evidences to attract the charges against the petitioners herein. Therefore, this Court is not inclined to entertain the quash petition as against the petitioners 1 to 3 herein.

7. As far as the fourth petitioner, the charge under Section 294(b) is concerned, the prosecution alleged that the fourth accused along with other persons scolded the de-facto complainant with filthy language. With respect to the offence under Section 506 (i) I.P.C is concerned, the fourth accused along with other persons threatened the de-facto complainant with dire consequences. It is seen from the statement of the complainant and other witnesses that the entire allegations are vague and there are no specific allegations as against the fourth petitioner is concerned. It is relevant to note that the offence under Section 294(b) I.P.C. as against the fourth petitioner is concerned, admittedly, as alleged by the prosecution the incident took place inside the house of the de-facto complainant and therefore, Section 294(b) I.P.C is not attracted. It is further seen from the statement that to attract the offence under Section 506(i) I.P.C. there is no specific allegation and averment as against the fourth accused. To attract the said offence, there should be a threat with intent to cause alarm to that person and the threat should be a real one and not just a mere word and the threat is to cause that person to do any act which he is not legally bound to do or the threat is to omit to do any act which that person is legally entitled to do. Therefore, there is no allegation to show that the de-facto



complainant was threatened by the fourth accused to omit to do any act which he is legally entitled to do or to prove any act which he is not supposed to do. There is no wrongful restraint by the fourth accused. Further it is seen from the statement that there is no allegation against the fourth accused that she obstructed the de-facto complainant or other persons so as to prevent him from moving any direction. Therefore, the offence under Section 341 I.P.C. is also not made out as against the fourth petitioner is concerned. Insofar as the offence under Section 448 I.P.C. is concerned, the property in question belongs to the first petitioner herein. He has purchased the vacant site in the year 1989 and subsequently, he constructed a dwelling house. The de-facto complainant is permitted to reside in the said house as permissive occupier. Therefore, the de-facto complainant himself stated that the petitioners have insisted him to vacate the said premises. Therefore, the offence under Section 448 I.P.C is also not attracted against the petitioner herein.

8. In view of the above discussions, this Court is inclined to quash the entire criminal proceedings in C.C.No.294 of 2014 as against the fourth petitioner / fourth accused alone is concerned. Therefore, this Criminal Original Petition is allowed insofar as the fourth petitioner is concerned. This Court is not inclined to entertain the quash petition as against the petitioners 1 to 3 herein and the same is dismissed insofar as the petitioners 1 to 3 are concerned.

9. At this stage, the learned counsel appearing for the petitioners requested for dispense with the personal appearance of the petitioners 1 to 3 before the trial Court.

10. Considering the said request, the appearance of the petitioners 1 to 3 before the learned Judicial Magistrate, Periyakulam is dispensed with, except the dates of hearing on which, the learned Judicial Magistrate insisted the petitioners 1 to 3 to appear before the Court.

11. Considering the year of the case, the learned Judicial Magistrate, Periyakulam, is directed to dispose of the case within a period of six months from the date of receipt of a copy of this order. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(C.O)

/True Copy/

Sub Assistant Registrar(CS-I)



To

1.The Judicial Magistrate, Periyakulam.

2.The Sub-Inspector of Police,
Thenkarai Police Station,
Theni District.

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

+1cc to Mr.D.Shanmugaraja Sethujpathi, Advocate in SR No.89874

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NM/RP/SAR I/12.10.18/4P/5C