BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 04.10.2018
ORDERS PRONOUNCED ON : 09.10.2018

CORAM

**THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH**

Crl.OP(MD)No.4260 of 2016
and
Crl.MP(MD)Nos.2136, 2137 and 3630 of 2016

1.Chellam
2.Palani Velmurugan
3.Abirami ... Petitioners

**Vs**

1.The State Represented by
The Inspector of Police,
K.Pudur Police Station,
Madurai.

2.V.Senthurammal ... Respondents

**PRAYER:-** Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the impugned charge sheet in C.C.No. 304 of 2015 on the file of the learned Judicial Magistrate No. VI, Madurai and quash the same insofar as the petitioner is concerned.

For Petitioners : Mr.C.Jeganathan
For Respondent No.1 : Mr.M.Chandrasekaran, Additional Public Prosecutor
For Respondent No.2 : Mr.S.Jeevagan

**ORDER**

This petition has been filed seeking to quash the proceedings in CC No.304 of 2015, on the file of the Judicial Magistrate-VI, Madurai.

2.The petitioners are arrayed as A-3, A-4 and A-5 in the final report.



3.The case of the prosecution is that A-1 and husband of the *de facto* complainant are brothers. Both of them were living in

Singapore and were working there. At that point of time, the *de facto* complainant's husband is said to have given 90,000/- Singapore Dollars to A-1 and with that amount, A-1 is said to have purchased a house at Singapore. Thereafter, the *de facto* complainant had married Rajendran, who is the brother of A-1. When the de facto complainant, her husband and A-1 returned to India, A-1 was requested to repay the 90,000/-Singapore Dollars, which he had borrowed from his brother. Thereafter, the family members had got together and arranged for a meeting in the house of A-3 on 16.05.2014. On the said date the accused persons are said to have threatened the husband of the *de facto* complainant and made him to execute a document, as if, he will receive 55,000/- Singapore Dollars from A-1. In this document, A-4 and A-5 had stood as witnesses. Thereafter, the *de facto* complainant, her husband and A-1 returned to Singapore. At Singapore, it seems that the *de facto* complainant's husband had given a complaint in the Indian Embassy against the accused persons, as if, he was threatened and was made to sign the agreement to receive 55,000/- Singapore Dollars. A-1 was called for enquiry by the Indian Embassy. Enraged by this, A-1 had informed about this incident to A-3, A4 and A-5 and they in turn went to the *de facto* complainant's house on 25.05.2015 and had verbally abused the *de facto* complainant. Thereafter, a complaint was given by the *de facto* complainant and the respondent Police have registered an FIR in Crime No.653 of 2015 and after completion of the investigation filed a final report for the offence under Sections 406, 420, 294(b) and 506(i) of IPC and the same has been taken on file by the Court below in CC No.304 of 2015.

4.The learned Counsel for the petitioners would submit that there was some money dispute between the brothers and the entire transaction had taken place in Singapore. A-3 is the mother-in-law of A-1. A-5 is the daughter of A-3 and A-4 is the husband of A-5. All these three persons had nothing to do with the transaction that took place between the brothers. The learned Counsel would further submit that if really the de facto complainant's husband was threatened and made to sign the agreement dated 16.05.2014, he would have immediately given a complaint to the Police. However, the *de facto* complainant's husband has not given any complaint in this regard. After nearly 1 year and 2 months, the de facto complainant has chosen to give a complaint to the first respondent Police on 22.07.2015, as if, all the accused persons have committed the offence. The learned Counsel also brought to the notice of this Court that there are absolutely no materials against these persons in order to attract the offence under Sections 406 and 420 of IPC. Insofar as the offence under Sections 294(b) and 506(i) is concerned, the learned counsel for the petitioner would submit that even, if the allegations are taken as it is, no offence has been made out. The learned Counsel for the petitioners also submitted that the entire complaint is attended with *mala fides* and all the family members have been unnecessarily roped in as accused in this case.

5.The learned Additional Public Prosecutor would submit that there are materials available against the petitioners for the offence under Sections 294(b) and 506 (i) of IPC.

6.The learned Counsel for the second respondent would submit that the second respondent's husband has been cheated and has been forced to execute an agreement and when this was questioned, the second respondent was abused and threatened by the accused persons. The learned Counsel, therefore, submit that the petitioners herein will have to face the trial and establish their innocence.

7.This Court has carefully considered the submissions made on either side.

8.Even as per the admitted case of the prosecution, the money transaction between A-1 and husband of the *de facto* complainant had taken place at Singapore and at the time when the transaction took place, the second respondent was not even married to the brother of A-1. There is absolutely no material to show that the husband of the second respondent had taken any steps to recover the money from A-1 at an earlier point of time. The petitioners herein namely A-3 to A-5 have nothing to do with the money transaction that took place between A-1 and his brother. A-3 is the mother-in-law of A1 and A-5 is her daughter and A-4 is the husband of A-5. They have been roped in as accused on the mere allegations that they came to the house of the second respondent and orally abused her.

9.The entire motive for the alleged incident was the agreement dated 16.05.2014 executed by the husband of the second respondent and A-1, wherein the husband of the second respondent had agreed to receive a sum of 55,000/- Singapore Dollars. If really this agreement has taken place by force, nothing prevented the husband of the second respondent to give a complaint immediately against A-1 and others. However, he was not chosen to do so. It is also the fact that A-1 had sent 55,000/- Singapore Dollars to the husband of the second respondent and he had chosen to return it. Therefore, it was a personal dispute between two brothers involving repayment of amount borrowed by one brother from another.

10.All of a sudden, the *de facto* complainant creates a cause of action in July 2015 by giving a Police complaint, as if, A-1 had cheated by not repaying the amount and had forced her husband to enter into an agreement to pay 55,000/- Singapore Dollars and when this was questioned, the petitioners herein went to the house of the *de facto* complainant and verbally abused her and her father and was also threatened by them.

11.It is not known as to how the respondent Police have filed a final report for the offence under Sections 406 and 420 of IPC against these petitioners. These petitioners had nothing to do with the money transaction between the second respondent's husband and A-1. In the first place, the allegations even, if it is taken as it is it, does not make out the offence under Sections 406 and 420 of IPC, since the issue involved is with regard to the repayment of the loan taken by A-1 from the husband of the *de facto* complainant. Therefore, this Court has no hesitation in holding that the respondent Police have not made out a case under Sections 406 and 420 of IPC, insofar as the present petitioners are concerned.

12.Insofar as the offence under Section 294(b) is concerned, the obscene words must have been used in a public place. The offence under this section cannot be made out for uttering words in private place. Even as per the allegations made in the final report, these petitioners are said to have gone to the house of the *de facto* complainant and abused the *de facto* complainant and her father. These allegations do not make out an offence under Section 294(b) of IPC.

13.Insofar as the offence under Section 506(i) of IPC is concerned, mere verbal threat without anything more will not make out an offence under Section 506(i) of IPC. In order to constitute an offence of criminal intimidation, the prosecution has to produce the materials to the effect that the verbal threat was made with an intention to cause alarm to the victim. In other words, the threat should be a real one and not just a mere word. In this case, the alleged words used by the petitioners against the *de facto* complainant, do not constitute an offence under Section 506(i) of IPC.

14.This Court is also able to see that the complaint itself is attended with *mala fides*. The husband of the *de facto* complainant is not directly coming into the picture. He is using his wife to give a complaint against his brother and all of other family members, in order to arm twist them to recover the amount from A-1. The *de facto* complainant's husband in fact goes to Singapore and gives a complaint in the Indian Embassy, against his brother and others. This is a straightforward case, where money was borrowed by A-1 from the *de facto* complainant's husband and was not repaid and therefore, they both have entered into an agreement, whereby the *de facto* complainant's husband had agreed to receive a sum of 55,000/- Singapore Dollars. If the *de facto* complainant's husband has not agreed for this and he was forced to execute an agreement, he would have taken action independently. That is the normal conduct that is expected of a prudent man. However, in this case, the *de facto* complainant has proceeded to give a complaint against A-1 and all, the family members.

15.In the considered view of this Court, the very complaint itself is attended with *mala fides*.

16.In view of the above, the proceedings in CC No.304 of 2015, on the file of the learned Judicial Magistrate -VI, Madurai is hereby quashed. The Criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar (CS-I)

**To**

1. The Judicial Magistrate No. VI,
   Madurai.

2. The Inspector of Police,
   K.Pudur Police Station,
   Madurai.

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

+ 1 CC TO M/s.VEERA ASSOCIATES, IN SR No. 89784
+ 2 CC TO Mr.S.JEEVAGAN, ADVOCATE IN SR No. 89325

DSK
TE/RSK/SAR-1 : 25/10/2018 : 5P/7C

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