

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.12.2019

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

CrI.O.P.No.31073 of 2012

and

M.P No.1 of 2012

1.R.Hemalatha
2.R.MadanMohan
3.Stella
4.Dr.Rajamoorthy

... Petitioners

Vs.

1. The State of Tamil Nadu
Represented by the
Deputy Superintendent of Police
Myladuthurai Division
Nagapattinam.
2. The Inspector of Police
Myladuthurai Police Station
Nagapattinam
3. Gunaselan

.... Respondents

Prayer:

Petitions filed under Section 482 of Cr.P.C., to call for the records in C.C.224 of 2012 on the file of the Learned Judicial Magistrate No.I, Myladuthurai and quash the same as illegal, incompetent, tainted and without jurisdiction.

For Petitioners: Mr.V.Raghavachari

For Respondents: Mr.C.Iyyapparaj for R1 & R2
Additional Public Prosecutor
R3-No Appearance

O R D E R

This Criminal Original Petition has been filed to call for the records in C.C.224 of 2012 on the file of the Learned Judicial Magistrate No.I, Myladuthurai and quash the same.

2. The case of the prosecution is that A2 is the father of A1, A4 is the husband of A1 and A3 is wife of one Ponraj and A3 is the School Correspondent of St. Marys Educational Trust run by her husband Ponraj, who was a close friend of the 3rd respondent/complainant. When the 3rd petitioner's husband was alive, he created a trust by name St. Marys Educational Trust. After the death of the said Ponraj, the accused person had taken over the trust and reconstituted it. Thereafter, there was a problem in between the 3rd respondent and other legal heirs of the deceased Ponraj, who are co-trustees along with the 3rd respondent. Further, it is alleged that the accused persons went to the house of the 3rd respondent and threatened the 3rd respondent and his family members and obtained his signature in the resignation letter in order to convert the Trust property into a newly formed trust and also, the accused persons abused and assaulted the 3rd respondent, for which the 3rd respondent filed a complaint before the police on 22.07.2011. As per the direction of the Deputy Inspector General of Police, Thanjavur, the then Deputy Inspector General of Police, Myiladurai Sub Division, Thanjavur registered a case in Crime No.420 of 2011 under Sections 386 and 506(i) of IPC on the same day implicating the petitioners as accused and after investigation, a charge sheet was also filed before the trial Court. Challenging the said charge sheet, the present Criminal Original Petition is filed.

3. The learned counsel appearing for the petitioners would submit no allegation had been set forth against the petitioners. Even otherwise, the dispute between the parties are purely civil in nature. The 3rd respondent had not claimed that his personal property had been snatched or threatened, but only affirms that the trust property has been dealt with. The complaint itself was lodged in his individual capacity in respect of the trust property and that too long after the resignation from the trust. In fact, he had resigned from the trust on 12.04.2010. However, the complaint was filed on 27.02.2011 after 1-1/2 years. In the present case, there is no dispute with regard to the husband of A3 starting the trust along with A3 and in order to settle the dispute, the 3rd respondent has already sent a resignation letter to the trust address and after lapse of 1-1/2 years, the 3rd respondent has filed a complaint which is unsustainable one and is not satisfactory to protect 386 and 506(i) of IPC.

4. The learned counsel for the petitioners referred the judgement of the High Court of Delhi in Kapil Garg (Dr.) Another v. State reported in 2003(70) DRJ 621 in which it has been held as follows:

19. As is apparent from the definition of "extortion" the accused should have an intention to put any person in fear of any injury to that person or any other person for the purpose of dishonestly inducing that person to deliver to him any property or valuable security or anything signed or sealed which may be converted into valuable security. It is beyond comprehension as to how does the resignation letter of a person fall within the ambit of a property or a valuable security or a document capable of being converted into valuable security.

20. Mere asking an employee to put in his resignation paper, otherwise his services would be terminated and if information about termination of service is sent to organisations employing the same kind of personnel he may not get job does not come within the mischief of "extortion". Writing letters is neither putting any person in fear of death or of grievous hurt for the purpose of dishonestly inducing that person to deliver any property or valuable security or anything signed or sealed which may be converted into a valuable security. It appears that the learned MM was labouring under a misconception that a "resignation letter" of an employee is such a document that could have been converted by the petitioners/employers into a valuable security. Such a view is difficult to ram down the throat and is highly preposterous."

5. Further, the Hon'ble Apex Court in Vikram Johar v. State of Uttar Pradesh and Another reported in 2019 SCC OnLine SC 609 has held as follows:

24. In another judgment, i.e. Manik Taneja v. State of Karnataka, (2015) 7 SCC 423, this Court has again occasion to examine the ingredients of Sections 503 and 506. In the above case also, case was registered for the offence under Sections 353 and 506 IPC. After noticing Section 503, which defines criminal intimidation, this Court laid down following in paragraphs Nos.11 and 12:-

"11. xxxxxxxxxxxx

A reading of the definition of "criminal intimidation" would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it

must be to do any act , which he is legally entitled to do.

12. In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of "criminal intimidation". The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the mind of the second respondent causing obstruction in discharge of his duty. As far as the comments posted on Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of the appellants posting a comment on Facebook may not attract ingredients of criminal intimidation in Section 503 IPC".

25. In the above case, allegation was that appellant had abused the complainant. The Court held that the mere fact that the allegation that accused had abused the complainant does not satisfy the ingredients of Section 506.

26. Now, we revert back to the allegations in the complaint against the appellant. The allegation is that appellant with two or three other unknown persons, one of whom was holding a revolver came to be complainant's house and abused him in filthy language and attempted to assault him and when some neighbours arrived there the appellant and the other persons accompanying him fled the spot. The above allegation taking on its face value does not satisfy the ingredients of Sections 504 and 506 as has been enumerated by this Court in the above two judgments. The intentional insult must be of such a degree that should provoke a person to break the public peace or to commit any other offence. The mere allegation that appellant came and abused complainant does not satisfy the ingredients as laid down in paragraph No1.3 of the judgment of this Court in Fiona Shrikande (supra).

6. Though notice has been served to the 3rd respondent, no one appeared before this Court.

7. The respondents 1 & 2 have filed a counter affidavit in which paragraphs 3 and 4 are extracted hereunder.

It is submitted that the above said complaint was received on 22.07.2011 at 22.00 hours, from the Deputy Inspector General of Police, Thanjavur, by Tr.Moovendan, the then Dy. Superintendent of Police, Myiladuthurai Sub Division, who registered a case in Kuttalam PS Crime No.420/2011 u/s.386, 506(i) IPC on 22.07.2011 at 22.00 hours against A1/Hemalatha, A2/Mathanmohan, A3/Stella and A4/Dr.Rajamoorthy and took up the case for investigation.

4. It is submitted that the then Deputy Superintendent of Police examined the defacto complainant and recorded his statement and also collected relevant documents from him. Apprehending arrest A1 to A3 obtained Anticipatory bail from this Hon'ble Court in CrI.O.P No.18192/2011 on 21.09.2011 with certain conditions.

8. The facts remain that the accused are one family members and A3 is the School Correspondent of St. Marys Educational Trust. Initially, the Trust was run by one Ponraj/husband of A3 and after the death of the said Ponraj, the accused had taken over the Trust and reconstituted it. There was a problem in between the third respondent and other legal heirs of the deceased Ponraj.

9. Further, it is alleged that the accused persons went to the house of the third respondent and threatened the third respondent and his family members and obtained his signature in the resignation letter in order to convert the Trust property into a newly formed Trust. The third respondent resigned from the Trust on 12.04.2010, however, the complaint was filed only on 27.02.2011 after a period of 1-1/2 years. There is no proper explanation for the delay in preferring the complaint.

10. On a perusal of the decisions referred supra, the necessary ingredients for implicating the accused in the above said offence is not available.

11. Considering the facts and circumstances of the case and on a perusal of sections 386 and 506(i) of IPC and also in the light of the aforesaid decisions which are squarely covered by the present case, this Court is inclined to allow this petition.

12. In view of the above, this Criminal Original Petition is allowed and the complaint in C.C No.224 of 2012 on the file of the Learned Judicial Magistrate No.I, Myladuthurai is hereby quashed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

- 1.The Judicial Magistrate No.I,
Myladuthurai
- 2.The Deputy Superintendent of Police
Myladuthurai Division
Nagapattinam.
3. The Inspector of Police
Myladuthurai Police Station
Nagapattinam
- 4.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

+1cc to Mr.V.Raghavachari, Advocate sr.105599

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nr 17/02/2020