

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 07.02.2019

Coram

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.23920 of 2017
and
Crl.M.P.Nos.13856 & 13857 of 2017
and
Crl.M.P.No.2643 of 2018

Vijaya ... Petitioner / Accused
Vs.

M.Thomas Mathew ... Respondent / Complainant

Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.762 of 2016 on the file of the Learned XVIII Metropolitan Magistrate, Saidapet, Chennai, and quash the same.

For Petitioner : M/s.V.Meenakshi Sundaram

For Respondent : No appearance

ORDER

This petition is filed to quash the Criminal proceedings in C.C.No.762 of 2016 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai, and the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, has taken cognizance for the offences under Sections 294(b), 323, 426, 448 of IPC.

2. The learned counsel for the petitioner would submit that there is no material or averments to attract the offences under Sections 294(b), 323, 426, 448 of IPC as against the petitioner. Even the averments made in the complaint do not constitute any offence as taken cognizance by the Court below.

3. The learned counsel for the petitioner would also submit that even according to the complainant, there is no hurt to the complainant and as such, the offence under Section 323 of IPC is not at all attract as against the petitioner. Insofar as the offence under Section 426 IPC, either the person committed mischief, causing loss or damages to the property. According to

the complainant as per the allegations and averments made in the complaint, does not aware of that the petitioner committed mischief and the entire allegations are against the driver and antisocial elements.

4. The learned counsel for the petitioner would further submit that the other offence under Section 448 of IPC also not at all attracted since there is absolutely no trespass by the petitioner and there is no averments and allegations in the complaint to attract the said offence. Therefore, the entire complaint is manifest prosecution and it is clear bias process of law. Therefore, the petitioner has sought for quashing the said complaint of the respondent.

5. Though the respondent appeared in person today, one or two times the matter was passed over for his presence, even then, he does not appeared for the Court.

6. Heard the learned counsel for the petitioner. None appeared for the respondent.

7. The respondent filed a private complaint as against the petitioner and the learned XVIII Metropolitan Magistrate, Saidapet, Chennai, has taken cognizance in C.C.No.762 of 2016 for the offences under Sections 294(b), 323, 426, 448 of IPC as against the petitioner.

8. The allegation against the petitioner is that on 16.06.2013 at about 10.00 p.m, the petitioner who came to visit her parents residing in 3rd cross street, Ellaiamman Colony, parked her car opposite to the complainant's house, blocking his parking point at his side. When the respondent/complainant questioned about the same, the petitioner requested that she will remove the car shortly. But, after some time, she came back and called the son of the respondent/complainant with a loud voice and asked him why she should remove the car as the place is common for all and she would park the car anywhere she wants. Thereafter, it is alleged that the petitioner/accused became menial and humiliating in her talk and used abusive and provocative language against the respondent/complainant.

9. It is further alleged that on 16.06.2015 at about 10.30 pm, the petitioner's driver who was fully drunk along with some antisocial elements, broke opened the locked iron gate of the Defacto complainant and assaulted him and his sons and other residents physically causing even blood injury. In this regard, the respondent/defacto complainant had given a complaint before the Inspector of Police, E-3 Teynampet Police Station, but, they did not take any action and therefore, the respondent/defacto complainant filed a direction petition before this Court in

Cr1.O.P.No.23266 of 2013 and only thereafter, the Inspector of Police, E-3 Teynampet Police Station, registered a case in Crime No.1627 of 2014. However, the police did not take any action against the petitioner. Further, it is alleged that the complaint registered in Crime No.1627 of 2014 was closed as mistake of fact, and after a period of two years from the date of occurrence, the present private complaint has been filed by the respondent/complainant.

10. The averments made in the complaints are very simple in nature and there is absolutely no specific allegations to attract the offences under Sections 294(b), 323, 426, 448 of IPC.

11. As per the averments made in the complaint, it is seen that on 16.06.2013, the petitioner had requested the respondent/defacto complainant to park her car in the place which is opposite to the complainant's house and she will remove the car shortly. Thereafter, she did not remove the car as she said and therefore, the respondent/complainant had questioned about the same, but, she used abusive and bad words against the complainant. Further, on 16.06.2015 the petitioner's driver who was fully drunk came along with some antisocial elements and broke opened the locked iron gate and assaulted the complainant and his son.

12. However, there is absolutely no material to show that the respondent/defacto complainant got injury by the assault committed by the petitioner's driver. Even assuming that the allegations are true, there is no averments to represent the petitioner into this Crime as if on instructions of the petitioner, his driver had broken the locked iron gate and committed assault on the defacto complainant and his son.

13. Further, it is seen that to attract the offences as alleged in the complaint, no action was taken and no proper records were produced by the respondent/defacto complainant. Moreover, the complaint has been filed only as against the petitioner and not as against the driver.

14. It is also seen that the Inspector of Police, E-3 Teynampet Police Station, though initially registered F.I.R, subsequently, closed as mistake of fact, and it was not mentioned in the private complaint and suppressed the fact that it was closed by the Inspector of Police, E-3 Teynampet Police Station, as mistake of fact.

15. Moreover, it is seen that the allegations are very vague and bald and also simple in nature. Therefore, the petitioner need not to go for RDL Trial when there is no

averments to attract any of the offences as alleged by the respondent/defacto complainant.

16. In view of the above discussions, this Court is inclined to quash the complaint registered as against the petitioner and therefore, it is quashed.

17. Accordingly, this Criminal Original Petition is allowed. The Criminal Proceedings in C.C.No.762 of 2016 on the file of the XVIII Metropolitan Magistrate, Saidapet, Chennai, is quashed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

raja

To

1. The XVIII Metropolitan Magistrate
Saidapet, Chennai.

+1cc to Mr.V.Meenakshi Sundaram, Advocate, S.R.No.11204

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सत्यमेव जयते Crl.M.P.No.2643 of 2018

SJ(CO)
GN(11/03/2019)

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