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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.04.2019

CORAM

THE HONOURABLE MR.JUSTICE **N.SESHASAYEE**

Crl.O.P. (MD)No.4800 of 2019

and

Crl.M.P. (MD)Nos.2960 and 2961 of 2019

1.Karuthathal

2.Chelladurai

3.Alangarapandian

... Petitioners

Vs.

1.The Inspector of Police,
Puliangudi Police Station,
Tirunelveli District.

2.K.Chinnasamy

... Respondents

PRAYER:- Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.11 of 2019 on the file of the learned Judicial Magistrate, Sivagiri, Tirunelveli District and quash the same.

For Petitioners : Mr.R.J.Karthick

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

Government Advocate (Crl.Side)

ORDER

The present petition has been filed to quash the final report laid in C.C.No.11 of 2019 on the file of the learned Judicial Magistrate, Sivagiri, Tirunelveli District, wherein, the petitioners face trial for charges under Sections 294(b), 353 and 506(2) of IPC.

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

3.The learned Counsel appearing for the petitioners vehemently argued that none of the statements of witnesses recorded under Section 161(3) of Cr.P.C., disclose commission of any of the offences or rather do not disclose the ingredients constituting any of the said cognizance.



4. On a close reading of the FIR and the various statements of witnesses, this Court is satisfied that offences under Sections 294 (b) and 506(2) of IPC are *prima facie* made out and for which, the petitioners have to face trial.

5. So far, offence under Section 353 of IPC is concerned, the statement of the witnesses does not appear to be constituting criminal force within the meaning of Sections 349 and 350 of IPC.

6. Under Section 353 of IPC, an offence is said to have been committed, when a person assaults or uses criminal force on any public servant, while, he was performing public duty. Neither the FIR nor the statements of the witnesses mention anything about the assault on the second respondent. Turning to criminal force, under Section 349 of IPC, the force is defined as follows:

"349. Force –

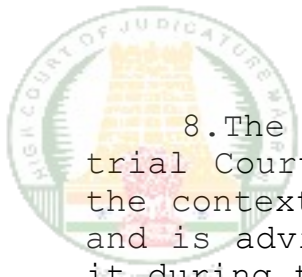
A person is said to use force to another if he causes motion, change of motion, or cessation of motion to that other, or if he causes to any substance such motion, or change of motion, or cessation of motion as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling: Provided that the person causing the motion, or change of motion, or cessation of motion, causes that motion, change of motion, or cessation of motion in one of the three ways hereinafter described.

First – By his own bodily power.

Secondly – By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

*Thirdly – By inducing any animal to move, to change its motion,
or to cease to move."*

7. When force is committed with *mens rea*, then it would go to constitute a criminal force. Therefore, the expression of criminal force as found in Section 353 of IPC must be one satisfying both 349 and 350 of IPC. A close reading of Section 349 of IPC, clearly mentions that there must have been bodily power for causing motion, or change of motion, or cessation of motion of another. The statements of witnesses only indicate that they were shouted at without respect and they do not go to state that there was use of criminal force. Necessarily, cognizance under Section 353 can not be said to have been committed. In the result, the case in C.C.No.11 of 2019 is quashed only for the offence punishable under Section 353 of IPC and as the rests, as indicated above, the petitioners have to stand for trial.



8.The petition is partially allowed. It is made clear that the trial Court shall not be guided by any of the observations made in the context of the offences under Sections 294(b) and 506(2) of IPC and is advised to go strictly as per the evidence to be recorded by it during trial. The connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar

/ True Copy /

Sub Assistant Registrar(CS)

Cmr

To

1.The Judicial Magistrate, Sivagiri,
Tirunelveli District.

2.The Inspector of Police,
Puliangudi Police Station,
Tirunelveli District.

3.The Government Advocate (Crl.Side)
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.J.KARTHICK, Advocate (SR-58783[F] dated 04/04/2019)

Order made in
Crl.O.P. (MD) No.4800 of 2019
03.04.2019

ES/06.05.2019/3P/5C