



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)No.11527 of 2019

Saritha

... Petitioner/Accused No.6

Vs.

1.The State Represented by
the Inspector of Police,
All Women Police Station,
Crime Branch,
Madurai City,
(Crime No.2 of 2019)

... 1st Respondent/Complainant

2.Santhanalakshmi

... 2nd Respondent/Defacto
Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records pertaining to the above case in P.R.C.No.23 of 2018 on the file of the learned Judicial Magistrate, Additional Mahila Court, Madurai and quash the same.

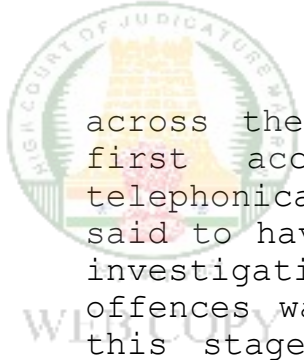
For Petitioner : Mr.Veerakathiravan
Senior Counsel
for M/s.Veera Associates

For R1 : Mr.A.Robinson
Government Advocate (Crl.side)

For R2 : Mr.C.T.Perumal
for Mr.S.Ramasamy

ORDER

The petitioner is figuring as sixth accused in P.R.C.No.23 of 2018 on the file of the Judicial Magistrate No.1, Madurai. The second respondent is the defacto complainant. The defacto complainant got married to A1 Karthikeyan on 18.11.2005. A male child was born through the said wedlock. The relationship between the first accused and the defacto complainant came under strain, leading to registration of Crime No.2 of 2010 on the file of the All Women Police Station, Madurai City South, for the offences under Sections 498(A), 315 and 506(ii) of IPC. In the said FIR, the petitioner herein is shown as sixth accused. The allegation made by the defacto complainant against the petitioner is that she came



across the love letters written by the petitioner herein to the first accused. Thereafter, when the defacto complainant telephonically enquired the petitioner herein, the petitioner is said to have criminally intimidated her. The case was taken up for investigation and final report was filed. Cognizance of the offences was taken. The case is presently pending committal. At this stage, this original petition has been filed by the sixth accused to quash the proceedings.

2. Heard the learned Senior Counsel appearing for the petitioner and the learned Government Advocate appearing for the complainant and the learned counsel appearing for the defacto complainant.

3. I went through the materials on record.

4. The learned counsel appearing for the respondents would unison submit that the inherent power of this Court available under Section 482 of Cr.P.C. is to be sparingly exercised and only in exceptional circumstances. Both would point that there are prima facie materials available and that, it is not for this Court to appreciate them by assuming the role of the trial Court. They wanted this Court to dismiss this criminal original petition.

5. I am not persuaded by the objections raised by the learned counsel appearing for the respondents.

6. As rightly pointed out by the learned Senior Counsel appearing for the petitioner, there is absolutely nothing on record to indicate that the relationship between the petitioner and A1 continued after A1 married the defacto complainant.

7. The learned Senior Counsel appearing for the petitioner would submit that A1 was in love with the petitioner originally and that, their affair suffered break down. In any event, the petitioner was not continuing her relationship with the first accused after the marriage between the defacto complainant and the first accused. The defacto complainant in her complaint would claim that she came across the letters said to have been written by the petitioner herein. One such letter is enclosed along with the final report. But then, the said letter does not bear any date and there is nothing on record to indicate that it was written after 18.11.2005. The only charge levelled against the petitioner is under Section 506(ii) of IPC. Section 506(ii) of IPC reads as under:-

"If threat be to cause death or grievous hurt, etc.—and if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend



to seven years, or with fine, or with both."

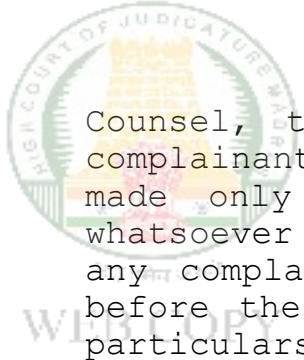
8. The Madras High Court, in the decision reported in 1989 CrL LJ 669 (Noble Mohandass Vs. State) held as follows:-

"7. As far as the offence under Section 506(2) is concerned, the learned counsel for the revision petitioner contended that the threat was not a real one, that it was of the kind of words which are currently and frequently used by people when they are angry and that further the threat was not spoken to by P.W.3 and P.W.4 who by that time had already come to the scene of occurrence. It is, in fact, found from the records that the threat would have been lashed out after P.Ws.3 and 4 came to the place and separated both the husband and wife. Therefore, the evidence of P.W.1 should have been corroborated by the evidence of P.W.3 and P.W.4 who were necessary witnesses to the occurrence. Since they did not corroborate the testimony of P.W.1 in this aspect, the offence cannot be held to be proved. Further for being an offence under Section 506(2) which is rather an important offence punishable with imprisonment which may extend to seven years, the threat should be a real one and not just a mere word when the person uttering it does not exactly mean what he says and also when the person at whom threat is launched does not feel threatened actually. In fact P.W.1 when she filed the complaint to the police officer, did not express any fear for her life nor asked for any protection. Therefore, the offence under Section 506(2) is not made out."

9. The learned Senior Counsel also drew my attention to another decision of the Madras High Court reported in 2000-2-L.W. (CrL.) 646 (Subramanianswamy Vs. State), in which, it was held as follows:-

"Part II of Section 506 of IPC is attracted if the criminal intimidation includes threat to cause death or grievous hurt. Mere outburst is not sufficient to hold that it would fall within the mischief of Section 506 of IPC. In the instant case, the averment in the complaint and the statements in the deposition, if taken together, there are no allegations in the whole complaint that the petitioner ever made any attempt or did any act in pursuance of his alleged expression."

10. Applying the ratio laid down in the aforesaid decisions, this Court notes that the essential ingredients set out in Section 506(ii) of IPC are not attracted. It is the defacto complainant who had challenged the petitioner by making a telephone call to her. The petitioner was working as Sub Inspector of Police even then. It is quite normal for any woman to react, when challenged in this fashion. Therefore, I am of the view that for a solitary outburst that too over telephone, one ought not to be fastened with any penal liability. That apart, as rightly pointed out by the learned Senior



Counsel, the petitioner is said to have shouted at the defacto complainant some time in the year 2009. The complaint itself was made only on 04.01.2010. There is absolutely no explanation whatsoever for this delay. The defacto complainant has not lodged any complaint against the petitioner before her superior officer before the occurrence. The complaint is also totally bereft of particulars. When a complaint is vague, it is impossible for any accused to defend oneself. If specific details are given, a person charged with the offence can properly defend oneself. That is why vagueness as a ground is invoked for quashing the charge sheet even in departmental proceedings.

11. The Hon'ble Supreme Court in the decision reported in 1992 Supp (1) SCC 335 (State of Haryana vs. Bhajan Lal) laid down certain parameters which have to be borne in mind while considering a petition for quashing a criminal proceedings. They are as under :-

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with malafide and/or where the proceeding is maliciously instituted with an ulterior motive for



wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.

12. I carefully went through the statements recorded under Section 161 of Cr.P.C. All that, the defacto complainant had stated is that as a result of the outburst of the petitioner, she came under mental stress. This mental stress is natural and attributable to the discovery of the affair between the petitioner and A1. The defacto complainant has not anywhere averred that she felt intimidated. It is quite probable that the defacto complainant wanted to take revenge on the petitioner. Therefore, looked at from any angle, I am of the view that the continuance of the prosecution against the petitioner would certainly amount to abuse of process. Parameters 3 and 7 of Bhajan Lal would apply to the case on hand. The prosecution against the petitioner stands quashed. This criminal original petition is allowed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Inspector of Police,
All Women Police Station,
Crime Branch, Madurai City.

2.The Judicial Magistrate,
Additional Mahila Court, Madurai.

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-84011[F] dated
28/08/2019)

Cr1.O.P(MD)No.11527 of 2019
27.08.2019

rmi

JMN(06.09.2019) 5P : 4C