



WEB COPY

CRL.O.P.(MD).No.1162 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.09.2019

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P. (MD) .No.1162 of 2018

and

CRL.M.P (MD) Nos. 482 and 483 of 2018

- 1.Ayyasamy
- 2.Mariappan
- 3.Rajan
- 4.Muthukumar
- 5.Dharmaraj

.. Petitioners
Accused Nos.3,4,5,6 & 7

Vs.

- 1.The Inspector of Police,
Kovilpatti West Police Station,
Thoothukudi District.

- 2.Arumugam

.. Respondents

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records and quash the proceedings in C.C.No.288 of 2017 on the file of the Judicial Magistrate No.I, Kovilpatti as against these petitioners.

For Petitioners : Mr.R.Niresh Kumar

For R1 : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.Side)

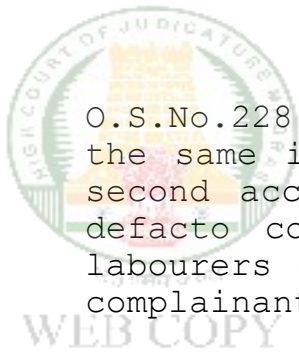
For R2 : Mr.S.Ramasamy

O R D E R

This quash petition is filed to quash the criminal proceedings in C.C.No.288 of 2017 on the file of the learned Judicial Magistrate No.I, Kovilpatti, charged for the offences punishable under Sections 147, 148, 294(b) and 506(ii) IPC.

2.The learned counsel for the first respondent would submit that there are totally seven accused in this case, in which the petitioners arrayed as A3 to A7. The case of the prosecution is that the defacto complainant is running a shop in the name and style "Mariappan Watch Shop" for rent in the premises belonging to the first and second accused. There was some dispute arose between them. In this regard, the defacto complainant also filed a suit in

<https://hcservices.ecourts.gov.in/hcservices/>



O.S.No.228 of 2015, before the District Munsif Court, Kovilpatti and the same is pending. While being so, on 25.09.2017, the first and second accused engaged the petitioners to repair the door of the defacto complainant's shop. Therefore, the petitioners being the labourers along with A1 and A2 went to the premises of the defacto complainant to repair the door.

3.At this juncture, there was some dispute arose between the first and second accused persons and defacto complainant. Due to which, the first and second accused abused the defacto complainant with filthy language. Therefore, both have lodged a complaints for the very same occurrence. Based on the complaint given by the first accused a case was registered in Crime No.494 of 2017, for the offences punishable under Sections 294(b), 324 and 506(ii) IPC as against the defacto complainant. Similarly, the defacto complainant lodged the complaint as against the petitioners herein and the same was registered in Crime No.495 of 2017, for the offence under Sections 147, 148, 294(b), 506(ii) IPC.

4.Now in both the cases, the first respondent has completed the investigation and filed a final report. Even according to the case of the prosecution, while repairing the door of the defacto complainant's shop, there was a dispute between A1 and A2 along with defacto complainant. The petitioners also scolded the defacto complainant with filthy language. The learned counsel further submitted that except this allegation, no overtact as against the petitioners. They were working under the A1 and A2 as Carpenter.

5.The learned counsel for the petitioner relied upon the judgment of the Honourable Supreme Court of India in the case of **Vikram Johar Vs. State of Uttar Pradesh and others** reported in **2019 (2) MWN (Cr.) 504 (SC)**. The relevant paragraph Nos.26 and 27 reads as follows:

"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 the 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 & 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 the Complainant does not satisfy the ingredients as laid down in Paragraph No.13 of the judgment of this Court in **Fiona Shrikhande** (supra).



27.Now, reverting back to Section 506, which is offence of Criminal intimidation, the principles laid down by **Fiona Shrikhande** (supra) has also to be applied when question of finding out as to whether the ingredients of offence are made or not. Here, the only allegation is that the Appellant abused the Complainant. For proving an offence under Section 506, I.P.C., what are ingredients which have to be proved by the prosecution?. *Ratanlal & Dhirajlal on law of Crimes*, 27th Edition with regard to proof of offence states following:

"... The prosecution must prove:

- (i) That the Accused threatened some person;
- (ii) That such threat consisted of some injury to his person, reputation or property; or to the person, reputation or property of someone in whom he was interested;
- (ii) That he did so with intent to cause alarm to that person; or to cause that person to do any act which he was not legally bound to do, or omit to do any act which he was legally entitled to do as a means of avoiding the execution of such threat."

6.The learned Government Advocate (Criminal Side) submitted that there are counter complaints. Both the cases, the respondent police have completed the investigation and filed a final report. The learned trial judge has taken cognizance in C.C.No.288 of 2017, in which, the petitioners herein arrayed as accused Nos.3 to 7. They are some specific overtact, therefore, sought for dismissal of this quash petition.

7.Heard the learned counsel for the petitioners and the learned Government Advocate (Criminal Side) for the official respondent.

8.There are totally 7 accused in this case, in which, the petitioner herein arrayed as A3 to A7. The learned trial Judge taken cognizance in C.C.No.288 of 2017, for the offences punishable under Sections 147, 148, 294(b) and 506(ii) IPC. According to the case of the prosecution, the defacto complainant is a tenant under the first and second accused. He has running a watch shop in the name and style "Mariappan" . The petitioners are labourers under the A1 and A2, they went to the occurrence place for repairing door in the defacto complainant's shop. Due to some wordy quarrel, the petitioners scolded the defacto complainant with filthy language. Except this allegation, there was no overtact as against the petitioners.

9.Even according to the case of prosecution, the petitioners have scolded the defacto complainant. There is no specific overtact as against the petitioners. Therefore, the above judgement is squarely appears to the case on hand. Further it is seen that the offence under Section 294(b), there must be the occurrence should have taken place in the public place. It rules as follows:



"294. *Obscene acts and songs:*

(b) sings, recites or utters any obscene song, ballad or word, in or near any public place.

10. It is seen from the records that Section 161 Cr.P.C, the occurrence took place in the premises of the defacto complainant's shop and the same is owned by the first and second respondents. Therefore, the offence under Section 294(b) is not attracted as against the petitioners. Insofar as the other offences are concerned, the petitioners are labourers under A1 and A2. They have not assembled to create any unlawful activities. Therefore, there is no evidence to attract this offence as alleged by the prosecution.

11. In view of the same, this Criminal Original Petition is allowed. The criminal proceedings in C.C.No.288 of 2017 on the file of the Judicial Magistrate No.I, Kovilpatti is quashed as against these petitioners. The case of the year is 2017, the trial Court is directed to complete the trial in C.C.No.288 of 2017, insofar as the other accused persons are concerned within a period of six months from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Writs)

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Sub Assistant Registrar (CS)

To

1. The Judicial Magistrate No.I,
Kovilpatti.
2. The Inspector of Police,
Kovilpatti West Police Station,
Thoothukudi District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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