



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.09.2019

CORAM :

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

CRL.O.P.(MD)No.18052 of 2014 and

M.P.(MD)No.1 of 2014

WEB COPY

1. P.Palanisamy
2. P.Rajashanmugam
3. Raman
4. Kanagaraj
5. Nachimuthu
6. Kathiresan

... Petitioners/Accused

Vs.

Murugesan

... Respondent/Complainant

**Prayer:** Criminal Original petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to C.C.No.118 of 2014 on the file of the Judicial Magistrate No.II, Karur and quash the same.

For Petitioners : Mr.K.P.S.Palanivel Rajan

For Respondent : Mr.S.J.Chakkaravarthy,  
for M/s.Eddy and Emboss  
Law Firm

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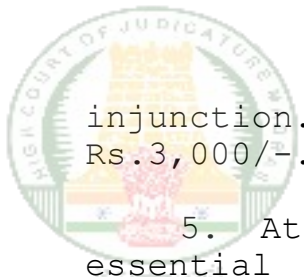
**ORDER**

The petitioners are facing trial in C.C.No.118 of 2014 on the file of the Judicial Magistrate No.II, Karur. There is a dispute between the petitioners on the one hand and the respondent Murugesan on the other. The petitioners are said to have cut the fence of the respondent on 14.06.2013 at about 9.00 p.m. and also threatened the respondent. In this regard the respondent gave a complaint before the Superintendent of Police, Karur. Since no action was taken, he filed a private complaint under Section 200 of Cr.P.C., before the Judicial Magistrate No.II, Karur. Cognizance of the offences under Sections 421, 445 and 506(i) of I.P.C., was taken. Summons were issued. Challenging the same, this Criminal Original petition came to be filed.

2. During the pendency of this Criminal Original petition, the first petitioner is said to have passed away.

3. This Court heard the learned counsel on either side.

4. It is also submitted that the respondent has filed O.S. No.271 of 2013 before the District Munsif Court, Karur, seeking the relief of bare injunction and also the relief of mandatory



injunction. According to the respondent, the value of damage is Rs.3,000/-.

5. At the very outset, it must be stated that even the essential ingredients under Section 421 of I.P.C. are totally absent. Section 421 of I.P.C. reads as follows:-

"421. Dishonest or fraudulent removal or concealment of property to prevent distribution among creditors

Whoever dishonestly or fraudulently removes, conceals or delivers to any person, or transfers or causes to be transferred to any person, without adequate consideration, any property intending thereby to prevent, or knowing it to be likely that he will thereby prevent, the distribution of that property according to law among his creditors or the creditors of any other person, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

6. I carefully went through the contents of the complaint. Nowhere there is any averment in this regard. According to the respondent, the first petitioner Palanisamy has committed some encroachments. That is why, he also filed a civil suit. Even though according to the respondent, the petitioners herein were armed with deadly weapons like Aruval and Iron Rods, they simply left the scene after intimidating the respondent herein. The respondent has not averred in his complaint that he felt intimidated by the hands of the petitioners herein.

7. The Madras High Court in the decision reported in (1988) L.W.(Crl.) 178 (Noble Mohandass V. 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 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."

8. Applying the aforesaid ratio, I have to necessarily hold that the ingredients under Section 506(i) of I.P.C., are wholly absent in this case. The respondent has alleged that there was a criminal trespass on the part of the petitioners herein. There is a civil dispute. That is why the respondent had already filed the civil suit claiming not only permanent injunction but also mandatory injunction for removing the alleged encroachments. When there is a strong contest between the parties and the assertion of mutual rights, I am of the view that it would not be proper to permit the respondent to parallelly pursue the criminal prosecution also. Continuance of the impugned proceedings would be an abuse of legal process. According to the respondent, the value of damage is just Rs.3,000/-. Therefore, I am of the view that the impugned proceedings deserves to be quashed. The Criminal Original petition stands allowed.

Consequently, connected Miscellaneous petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

Sub Assistant Registrar(CS)

pmu

To

The Judicial Magistrate No.II, Karur.

+1 CC to M/s.EDDY & EMBBOSS LAW FIRM, Advocate ( SR-86273[F] dated 12/09/2019 )

+1 CC to M/s.K.P.S.PALANIVELRAJAN, Advocate ( SR-86343[F] dated 12/09/2019 )

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