



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.10.2019

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CRL.O.P.(MD)No.10849 of 2015 and

M.P.(MD)Nos.1 & 2 of 2015

WEB COPY

1. Avudaiappan
2. Thangam
3. Murugan @ Krishnan
4. Venkatesh @ Sundaram

... Petitioners/Accused Nos.1 to 4
Vs.

1. The Sub Inspector of Police,
Sathankulam Police,
Sathankulam,
Tuticorin District.
(Crime No.373 of 2014

... 1st Respondent/ Complainant

2. Kathirvel
Complainant

... 2nd Respondent/Defacto

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to the complaint in C.C.No.102 of 2015 on the file of the Judicial Magistrate, Sathankulam and quash the same as illegal.

For Petitioners : Mr.T.Vadivelan

For R-1 : Mr.A.Robinson,
Government Advocate(Crl.Side).

For R-2 : Mr.R.Pon Karthikeyan

ORDER

The petitioners herein stand accused in C.C.No.102 of 2015 on the file of the Judicial Magistrate, Sathankulam.

2. The second respondent herein, namely, Kathirvel is the defacto complainant. The second respondent lodged a complaint before Sathankulam police station against the petitioners herein leading to registration of Crime No.373 of 2014. Investigation was taken up and final report was filed. Cognizance of the offences under Sections 448, 294(b) and 506(ii) of I.P.C. was taken. To quash the impugned proceedings, this criminal original petition has been filed.

3. Heard the learned counsel appearing for the petitioners and the learned Government Advocate(Crl.Side) appearing for the first respondent and the learned counsel appearing for the defacto complainant.



4. The case of the prosecution is that there is a civil dispute regarding a common wall between the defacto complainant Kathirvel and the first petitioner Avudaiyappan. Kathirvel had filed a civil suit against the first petitioner and had obtained an interim order of injunction. The defacto complainant would allege that on 16.09.2014 at about 08.00 a.m., the accused barged into the house and abused him with filthy language and also held out dire threats.

5. It is not in dispute that the defacto complainant did not suffer any injury. On the other hand, the first petitioner is said to have suffered an injury and was admitted in hospital. At the instance of the first petitioner, Crime No.374 of 2014 was registered against the defacto complainant. But the said case was closed as "Mistake of Fact".

6. It is not the case of the defacto complainant that he felt intimidated. The Madras High Court in the decision reported in (1988) L.W.(CrI.) 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 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."

7. The Madras High Court held that to attract the offence under Section 506(ii) of I.P.C, the threat held out by the accused must be a real one. In this case, not even a single injury was caused to the defacto complainant. The parties are neighbours. There is a civil dispute between them. The cases were registered on either side.



Therefore, in the heat of the moment certain petty quarrel had erupted and the same has been given a criminal colour. Section 95 of I.P.C. reads as under:-

"95. Act causing slight harm

Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm."

8. In this case, I am of the view that the aforesaid provision deserves to be invoked. Therefore, continuance of the impugned prosecution can only be characterised as an abuse of legal process.

9. The impugned prosecution stands quashed. The criminal original petition stands allowed. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CSII)

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Sub Assistant Registrar(CS)

pmu

To

1. The Judicial Magistrate,
Sathankulam.

2. Sub Inspector of Police,
Sathankulam Police,
Sathankulam,
Tuticorin District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R.PON KARTHIKEYAN, Advocate (SR-91883[F] dated 15/10/2019)

+1 CC to M/s.T. VADIVELAN, Advocate (SR-91999[F] dated 15/10/2019)

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KB(17/03/2020) 3P 6C

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