



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 16.10.2019
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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

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Crl.O.P.(MD)No.8677 of 2015

and

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

- 1.Ismail
- 2.Basheer Mohammed
- 3.Abdul Lathif

...Petitioners/Accused No.1 to 3

Vs

1. State Rep. By
The Inspector of Police,
Uppiliapuram Police Station,
Thuraiyur Taluk,
Trichy District.

... 1st Respondent/Complainant

2. S.T.Natarajan

... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records relating to the C.C.No.81 of 2015, on the file of the learned Judicial Magistrate, Turaiyur and quash the same.

For Petitioners : Mr.N.Mohan

For Respondents : Mr.A.Robinson

Govt. Advocate (Crl. Side) for R1
: No appearance for R2

O R D E R

The petitioners are facing trail in C.C.No.81 of 2015, on the file of the learned Judicial Magistrate, Thuraiyur, for the offence under Sections 294(b), 427 and 506(ii) of I.P.C. The petitioners and the defacto complainant/second respondent herein are having their houses opposite to each other. The house of the defacto complainant is located on the northern side while the house of the first petitioner is located on the southern side. A common lane runs across. It appears that Natarajan wanted to install a gate closing the common lane. This has been objected to by the petitioners herein. It is seen from the materials on record that the third petitioner herein filed Crl.O.P.(MD)No.20387 of 2014, seeking police protection for carrying out his construction work. The same was however dismissed by this Court on 14.11.2014. The defacto complainant and his wife filed O.S.No.337 of 2014 before the



District Munsif Court, Thuraiyur on 27.11.2014, seeking the relief of permanent injunction for forbearing the petitioners herein from preventing the installation of the iron gate for closing the common lane.

2. While so, the defacto complainant lodged a complainant before Uppiliapuram Police Station on 27.11.2014 alleging that the petitioners herein had demolished his compound wall and caused damage to the tune of Rs.2,000/-. They were also said to have criminally intimidated him and abused him in filthy language. Based on his complaint, Crime No.377 of 2014 was registered. Investigation was taken up and final report was filed before the learned Judicial Magistrate, Thuraiyur. Cognizance of the offences was taken and the case was taken on file C.C.No.81 of 2015. To quash the same, 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.

4. Even though the defacto complainant had entered appearance through counsel, he is not present before this Court today.

5. The primary contention urged by the petitioners' counsel is that to reinforce his injunction suit, this complaint has been lodged. He would further contend even though the defacto complainant claimed that a compound wall has been damaged, there is actually no compound wall at all. What separates the petitioners' house from that of the second respondent is only a common lane. There is no compound wall any where. This Court called upon the prosecution to indicate with reference to the materials on record as to where, there was a compound wall and where the damage had taken place. The observation sketch only mentions the scene occurrence and there is no compound wall as such. If a compound wall has been damaged, there would certainly be some physical evidence to establish the same. In this case, there is no material whatsoever to establish the charge. Since this is case of zero material, I am of the view that the charge under Section 427 of I.P.C., will have to be quashed.

6. That leaves us only with the other two allegations namely., one is under Section 294 of I.P.C. and another is under Section 506 (ii) of I.P.C.

7. It has been held in the decision reported in **[1989 Crl.L.J. 669 (Noble Mohandass Vs. State)]** that to attract the offence under Section 506(ii) of I.P.C., the intimidation held out by the accused must be a real one. In this case, the defacto complainant has not claimed that any where he felt intimidated. In fact the petitioners herein in their earlier complaint submitted



that the defacto complainant is the president of local trade association and that they are not able to enjoy their legitimate civil right and that is why, they had moved this Court seeking police protection.

8.As regards the abuse is said to have been committed by the petitioners herein, I am of the view that Section 95 of I.P.C., can as well be invoked. 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.'

9.Since the primary allegations made against the petitioners are not at all based on any material, I am of the view that continuance of the impugned prosecution is an abuse of legal process. The impugned proceedings stand quashed and the criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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/ /2020

Sub Assistant Registrar(CS)

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To:

1.The Judicial Magistrate, Turaiyur.

2. The Chief Judicial Magistrate,
Trichy District

3. The Inspector of Police,
Uppiliapuram Police Station,
Thuraiyur Taluk,
Trichy District.

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

+1 CC to Mr.N.MOHAN, Advocate (SR-92404[F] dated 17/10/2019)

Crl.O.P. (MD)No.8677 of 2015

16.10.2019

MK (05.02.2020) 3P 6C

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