



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.11.2019

CORAM:

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

Crl.O.P. (MD) No.10737 of 2018

and

Crl.M.P. (MD) Nos.4832 & 4833 of 2018

- 1.Mr.Samsu Maraikayar
- 2.Mr.M.Sikkander
- 3.Mr.Naina Mohammed
- 4.Mr.Syed Abudhakir
- 5.Mr.Mohammed Hussain
- 6.Mr.Himmadullah
- 7.Mr.Kamal Mustafa
- 8.Mr.Muhaideen Abdul Kadar
- 9.Mr.Syed Iscac
- 10.Mr.Peer Meera Saribhu

... Petitioners/Accused Nos 1 to 10

-Vs-

R.S.Rahmadullah

... Respondent No.1/Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to the Private Complaint in proceedings in S.T.C.No.166 of 2018 on the file of the learned Judicial Magistrate, Mudukulathur, for offences under Sections 188, 294, (b), 506 (i) of Indian Penal Code, 1860, and Section 68 (3) of Wakf Act, 1995 and quash the same as illegal and as against the petitioner.

For Petitioners

: Mr.T.Lajapathi Roy

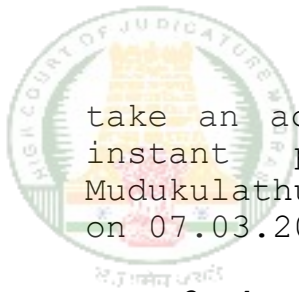
For Respondent

: Mr.S.M.A.Jinnah

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.165 of 2018 on the file of the learned Judicial Magistrate, Mudukulathur, thereby having been taken cognizance for the offences under Sections 188, 294 (b), 506 (i) of I.P.C. and under Section Wakf Act, 1995, as against the petitioner.

2.The case of the prosecution is that on 15.07.2017, the present Jamath members are all went to asked the account detail of the previous two academic year to the accused persons along with the defacto complainant who is the present Jamath Mutavalli or the President of the masjid and the accused persons scolded the wrong word against the defacto complainant and they threatened the defacto complainant and warned him as if he asked the account detail further more they would kill him. Hence, he made a complaint against the accused person to the Valinokkam Police Station but they failed to



take an action against them, hence the respondent had filed that instant petition before the learned Judicial Magistrate, Mudukulathur, and the impugned summon was issued to the petitioners on 07.03.2018.

3.The learned counsel appearing for the petitioners would submit that the petitioners is the Ex-Secretary and members in that Masjid, for every three year, the election was conducted by the Wakf Board based on that on 10.07.2009, the petitioner was elected as the Secretary and that particular period was came an end on 2012. He further submitted that from 13.07.2012 to 13.07.2015 another party was elected in that masjid and the mutawalli is the same person. But, the petitioner is not secretary in the subsequent election. He further submitted that the subsequent tenure on 09.03.2018, the present complainant/Respondent was elected as the president and his tenure period was going to over on 19.08.2017 and Wakf has announced another election on 22.09.2017.

4.Per contra, the learned counsel for the respondent would submit that there are specific allegations as against the petitioners to proceed with the trial. Therefore, he vehemently opposed the quash petition and prayed for dismissal of the same.

5.Heard the learned counsel appearing for the petitioner and the learned counsel appearing for the respondent and perused the materials available on record.

6.On a perusal of the charge as against the petitioners are concerned, the first respondent levelled the charge under Section, 188 of I.P.C., as against the petitioner. It is seen from the charge that on 15.07.2017, the present Jamath members are all went to asked the account detail of the previous two academic year to the accused persons along with the defacto complainant who is the present Jamath Mutavalli or the President of the masjid and the accused persons scolded the wrong word against the defacto complainant and they threatened the defacto complainant and warned him as if he asked the account detail further more they would kill him. Except the official witnesses, no one has spoken about the occurrence and no one was examined to substantiate the charge against the petitioners. It is also seen from the charge itself that the charges are very simple in nature and trivial. Section 188 reads as follows:

"188. Disobedience to order duly promulgated by public servant – Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury,



to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

7.Considering the above, this Court finds that for the simple charge, the petitioners cannot be put into an ordeal trial. Therefore, this Court is inclined to quash the criminal proceedings for the offence under Section 188 IPC alone. In so far as the other offences are concerned, the Trial Court is directed to complete the trial within a period of six months from the date of receipt of a copy of this order.

8.In view of the above, this criminal original petition is partly allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AD-II)

// True Copy //

Sub Assistant Registrar(CS)

Dss

To

The Judicial Magistrate,
Mudukulathur.

+1CC TO MR.T.LAJAPATHY ROY, Advocate Sr. No.97965
+1CC TO MR.S.M.A.JINNAH, Advocate Sr. No. 97903

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MA (CO)
TR(10.12.2019) 3P 4C