



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2019

CORAM:

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

Crl.O.P.(MD).No.10821 of 2018

and

Crl.M.P.(MD)Nos.4870 & 4871 of 2018

WEB COPY

1. Parameswaran

2. Porkodi

3. Pothirajan

4. Dhanam ... Petitioners

Vs.

E. Irulappan ... Respondent

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records relating to the proceedings in C.C.No.209 of 2018 pending on the file of Judicial Magistrate No. VI, Madurai and quash all the further proceedings of the same.

For Petitioners : Mr.K.Samidurai
For Respondent : Mr.P.Venkatesan

ORDER

The Criminal Original Petition has been filed to quash the proceedings in C.C.No.209 of 2018, pending on the file of the learned Judicial Magistrate No. VI, Madurai.

2.Heard both sides.

3.The petitioners are arrayed as A1 to A4. The crux of the complaint is that the first petitioner/A1 started to quarrel with the respondent/ defacto complainant and also intimidated him and tried to assault the respondent with iron rod and the second petitioner/A2 insisted the third petitioner/A3 to kill the respondent and the third petitioner/A3 took Aruval from the second petitioner and tried to assault the respondent and the fourth petitioner / A4 is also armed with stick and tried to attack the respondent/ defacto complainant and also the petitioners/A1 to A4 abused the defacto complainant using filthy language and threatening with dire consequences. The first petitioner is aged about 71 years, the second petitioner is aged about 63 years, the third petitioner is aged about 69 years and the fourth petitioner is aged about 60 years and the petitioners are hailing from the same family. Under Section 294(b) I.P.C, two ingredients need to be established



viz., the first accused ought to have uttered bad words in public place and caused annoyance, others in the genuine stand as to the averments that they petitioners try to assault the defacto complainant and they used bad words that the petitioners are same family members and jointly tried to assault the defacto complainant. The words used by the petitioners in their house and no evidence to show that the utter bad words in the public place. The intention of the petitioners in making as the act after uttering the obscene words in punishing these consequences, then in public place would cause annoyance by standards and to happen no such public place.

4. From a reading of the entire complaint, no specific allegation about the presence of public during the said occurrence. Therefore, the offence under Section 294(b) I.P.C. is not at all made out as against the petitioners. Insofar as the offence under Section 506(ii) I.P.C. is concerned, the complainant did not suffer any injury. The threat made out by the petitioners does not appear to be real, since all the petitioners aged about more than 60 years. In fact, the first petitioner is aged about more than 70 years. At any cost, the respondent / defacto complainant has not nowhere claimed that he intimidated by the petitioners/A1 to A4. In this regard, it is relevant to rely upon the judgment of this Court reported in **1989 Criminal Law Journal 699 [Noble Mohandass Vs. State]**, which is extracted 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.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 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 S.506(2) is not made out."

The above judgment is squarely applied to the case on hand and consequently, the offence under Section 506(ii) I.P.C. is not at all attracted as against the petitioners.



5. Insofar as the offence under Section 341 I.P.C is concerned, there is no specific averments and allegations as against the petitioners, to attract the offence under Section 341 I.P.C.. That apart there are other proceedings pending between the petitioners and the respondent in respect of erecting electric pole. When the petitioners intended to erect electric pole the respondent objected the same and also filed Writ Petitions in W.P.(MD)No.2349 of 2014. He also filed another Writ Petition in W.P.(MD)No.1962 of 2014 before this court. Both the Writ petitions are disposed of as against the petitioners therein/ respondent herein and therefore, the entire complaint is nothing but a clear abuse of process of law and it would be sustained as against the petitioners. Hence, this Court is inclined to allow the petition.

6. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.209 of 2018, pending on the file of Judicial Magistrate No. VI, Madurai, is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AD-I)

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/ /2020

Sub Assistant Registrar(CS)

Ls

To

Judicial Magistrate No. VI, Madurai

+2 CC to Mr.K. SAMIDURAI, Advocate (SR-101885[F] dated 27/11/2019)

+1 CC to Mr.S. RAMASAMY, Advocate (SR-102171[F] dated 28/11/2019)

Crl.O.P. (MD) .No.10821 of 2018
27.11.2019

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