BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2019

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CRL.O.P(MD)No.10623 of 2017

and

CRL.M.P(MD)No.7289 of 2017

1.Sam Asir Ayyavoo

2.Sam Arther Jebakumar ...Petitioners/Accused 1 and 2

Vs.

1.The State, represented by
The Sub Inspector of Police,
B3, Theppakulam Police Station,
Madurai City, Madurai.,
(Crime No.334 of 2010) ....Respondent/Complainant

2.Famina Mary ...Respondent/De-facto Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying this Court to call for the records in C.C.No.145 of 2011, on the file of Judicial Magistrate No.I, Madurai and to quash the same.

For Petitioners : Mr.R.C.Paul Kanagaraj
For Respondent-1 : Mr.K.Dinesh Babu
Addl.Public Prosecutor
For Respondent-2 :Mr.R.Manoharan

ORDER

This Criminal Original Petition has been filed seeking to quash the final report filed by the first respondent/Police which has been taken on file by the Court below in C.C.No.145 of 2011. The Court below has taken cognizance of the final report for the offence under Sections 294(B), 504, 506(ii) and 509 of IPC.

2.The case of the prosecution is that the husband of the second respondent/De-facto complainant and the first Petitioner(A1) are known to each other and both of them had jointly done some business. There was some misunderstanding between the parties and the first Petitioner is said to have demanded some money which is due and payable to him in the business. After sometime, it is alleged that the accused persons had threatened the de-facto complainant and her husband. The further allegation that has been made is that the accused persons started making phone calls from 22.9.2009 onwards and were using abusive language and were threatening the de-facto complainant. Therefore, a complaint came to be given to the first respondent/ Police on 7.3.2010 and an FIR was registered in Crime No.334 of 2010.

3.The first respondent/Police, in the course of investigation, recorded the statements of the de-facto complainant, her husband and five other witnesses.

4.The learned counsel for the Petitioners submitted that the entire complaint is attended with mala-fides and a dispute between the partners is attempted to be given a criminal colour. The learned counsel submitted that the entire threat as per the de-facto complainant is said to have been made through Mobile Phone. This threat is said to have taken place from 22.9.2009. However, the complaint itself came to be given with an extraordinary delay of nearly six months only during March 2010. The learned counsel further submitted that there is absolutely no material to show that such phone calls were made by the accused persons to the Mobile phone belonging to the de-facto complainant and the official witness who was examined by the Investigating Officer has categorically stated that he was not able to find out the details of the phone calls due to the delay in lodging the complaint. The learned counsel submitted that except the deposition of L.W.1 and L.W.2, there is not even a scrap of material for the prosecution to proceed further with the trial in this case. Therefore, the learned counsel sought for the quashing of the proceedings.

5.Per contra, Mr.R.Manoharan, learned counsel appearing for the second respondent/de-facto complainant submitted that the complaint and the statement recorded from the de-facto complainant would clearly reveal the manner in which the de-facto complainant was abused in filthy language and threatened with dire consequences. The learned counsel submitted that the phone conversation was also heard by the husband of the de-facto complainant and he has also spoken about the same to the Investigating Officer while his statement was recorded. The learned counsel, therefore, submitted that based on the statement given by the de-facto complainant and her husband, a prima facie case has been made out and the materials available are enough to frame charges against the petitioners. Therefore, the learned counsel submitted that the present Criminal Original petition is liable to be dismissed and a time limit should be fixed for the completion of trial.

6.The learned Additional Public Prosecutor appearing on behalf of the first respondent/Police submitted that there are sufficient materials to proceed further in this case and just because the call details are not available, it does not mean that the prosecution cannot establish the case and the statements given by L.W.1 and L.W.2 are enough to prosecute the petitioners for various offences under which, they are charged. The learned Additional Public Prosecutor sought for fixing a time limit for completion of the trial.

7.This Court has carefully considered the submissions made on either side and perused the materials available on record.

8.The case of the de-facto complainant is that there were some business transactions between A1 and her husband and there was some misunderstanding. A1 was putting pressure to settle his share in the business which ultimately ended in threat being exerted on the de-facto complainant and on her husband. According to the de-facto complainant, threat was exerted through phone calls that is said to have been made by the Petitioners from various mobile numbers to the de-facto complainant. The complaint as well as the statement recorded from the de-facto complaint and her husband reflects the manner in which the Petitioners are said to have used abusive language against them.

9.The Court below has taken cognizance of the final report for the offence under sections 294(b), 504, 506(ii) and 509 of IPC.

10.In order to constitute an offence under Section 294(b) of IPC, the obscene acts or words must be done or uttered at or near any public place. If the same is not done at or near any public place, the fundamental requirement under the provision is not satisfied and no offence is made out. In the present case, the de-facto complaint is said to have received phone calls in her mobile phone. This is said to have been over heard by her husband. These allegations *per se* do not make out an offence under Section 294 (B) of IPC.

11.The next provision under which the Court below has taken cognizance of the final report is under Section 504 of IPC. Section 504 of IPC speaks about the intentional insult made by the accused person who is likely to provoke breach of peace. It is not known as to how this provision will have any application to the facts of the present case. This provision is intended for provoking breach of peace which is commonly understood as a breach of peace in public. The present case is purely a personal dispute between two parties. Therefore, this provision is also not attracted in the present case.

12.The Court below has taken cognizance of the offence under Section 506(ii) of IPC. In order to constitute the offence of criminal intimidation, the requirement under Section 503 of IPC should be satisfied. It is now settled law that mere oral threat without any thing more does not constitute the offence of criminal intimidation. In this case, the threat is said to have happened through phone calls and there is no material to show that such phone calls have happened between the petitioners and the de-facto complainant.

13.The last provision under which the Court below has taken cognizance of the final report is under Section 509 of IPC. This provision speaks about word, gesture or any act which is intended to insult the modesty of a woman. The allegation made by L.W.1., in the present case, is the oral abuse said to have taken place during September 2009 and the complaint itself was given only in

March 2010. If the abuse is so bad and the threat is so imminent, it defice logic as to why the second respondent would wait for nearly six months even to lodge a complaint. That apart, the best evidence that may be available for the prosecution to substantiate the charge will be the phone call details that could be collected from the concerned nodal agency. Further, the witness who was examined by the Investigating Officer as L.W.7 clearly shows that no call details are available due to enormous delay in giving the complaint. If no such call details are available, the prosecution can never establish the case against the Petitioners. In other words, the Court below cannot proceed further with the trial on the mere statements of L.W.1 and L.W.2. This is more so since there was already a dispute between the parties with regard to the business transaction and therefore, the Court will have to necessarily seek for corroboration of the statements of L.W.1 and L.W.2. Unfortunately, in this case, no such corroboration is available. In view of the above, the Petitioners should not be made to face the ordeal of trial in the absence of any materials. Therefore, this Court has to necessarily exercise its jurisdiction under Section 482 of Cr.P.C., to prevent abuse of process of Court.

14.In the result, the proceedings in C.C.No.145 of 2011, on the file of the Judicial Magistrate No.1, Madurai is hereby quashed and the Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (co)

// True Copy //

Sub Assistant Registrar(CS)

vsn

To

1.The Judicial Magistrate No.I
Madurai.

2.The Sub-Inspector of Police,
B-3, Theppakulam Police Station,
Madurai City, Madurai.

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

+1 CC to Mr.R.C. PAUL KANAGARAJ, Advocate (SR-102631[F] dated 29/11/2019)

ORDER MADE IN
CRL.O.P(MD)No.10623 of 2017 and
CrL.M.P(MD)No.7289 of 2017
29.11.2019

VB(20.12.2019) 4P 5C