



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.10.2019

WEB COPY

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P. (MD) .No.8160 of 2017

and

Crl.M.P. (MD) Nos.5536 & 5537 of 2017

Paramasivan ... Petitioner/A-1/ A-1

vs.

- 1) The State Rep by
The Inspector of Police,
Vickramasingapuram Police Station,
Tirunelveli District.
(Crime No.193 of 2013) ... Respondent/ Respondent/
Complainant
- 2) Anthonysamy ... Respondent/ Complainant/
De facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the proceedings pending in S.T.C.No.793 of 2016 on the file of the learned Judicial Magistrate Court, Ambasamuthiram, Tirunelveli District and quash the same as illegal and devoid of merits as against the petitioner.

For Petitioners: Mr.M.Jegadeesh Pandian

For R1 : Mr.K.Dinesh Babu,
Additional Public Prosecutor

For R2 : Mr.P.Subbiah

O R D E R

This Criminal Original Petition has been filed seeking to quash the proceedings in S.T.C.No.793 of 2016 on the file of the learned Judicial Magistrate Court, Ambasamuthiram, Tirunelveli District.

2. It is seen from the records that, based on the complaint

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given by the second respondent, an F.I.R. came to be registered by the first respondent police in Crime No.193 of 2013. After investigation, a closure report was filed before the Court below. Aggrieved by the same, the second respondent filed the protest petition and the same was converted into a private complaint and the Court below has taken cognizance of the private complaint for the offense under Sections 294(b), 447 and 506(i) of IPC.

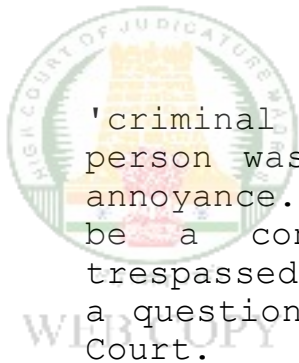
3. The learned counsel for the petitioner submitted that, even if the allegations made in the protest petition/ private complaint is taken to be true, no offence has been made out in this case. The learned counsel submitted that there is already a civil dispute between the parties which has reached finality before the competent Court with regard to the property. That apart, the offense under Section 294(b) will get attracted only if obscene words or act was done in a public place. In the present case, admittedly, it was done in the property, where there was a dispute and there was no public involved in this. Learned counsel further submitted that even if the allegations are taken as it is, the same will not make out an offence of criminal intimidation.

4. The learned counsel appearing on behalf of the second respondent submitted that the petitioner has used rowdy elements for the purpose of illegally trespassing into the property belonging to the second respondent. The learned counsel further submitted that apart from the petitioner, there were three other accused persons in this case. He brought to the notice of this Court one another incident, wherein huge damage was also done to the property resulting in another F.I.R. registered in Crime No.351 of 2012. The learned counsel submitted that there are sufficient allegations made in the complaint and there is no ground to interfere with the same.

5. The learned Additional Public Prosecutor appearing on behalf of the respondent police, on instructions, submitted that on the completion of investigation, the respondent police did not find any material to proceed further with the case and therefore, a closure report was filed before the Court below.

6. This Court carefully considered the submission made on either side and the materials available on record.

7. There is admittedly a property dispute between the parties. The dispute with regard to the property can be settled only before the competent Civil Court and according to the learned counsel for the petitioner, it has reached finality before the competent Civil Court. In order to constitute an offense under Section 447 of IPC, the offense of criminal trespass, as defined under Section 441 of IPC, should be satisfied. A trespass will amount to a



'criminal trespass' only if the dominant intention of the accused person was for committing an offense or intimidation, insult or annoyance. Therefore, mere entry is not enough and there must also be a consequent offense committed. Whether the petitioner trespassed into the property belonging to the second respondent is a question of fact which has to be decided only by the competent Court.

8. This Court has to now see if such a trespass was done for committing any offense. The alleged offense in this case are under Sections 294(b) and 506(i) of IPC. In order to constitute an offense under Section 294(b), it must be proved by the prosecution that,

- (a) the offender has done an obscene act in any public place or had uttered any obscene word in any public place; and
- (b) has caused annoyance to another person.

9. Therefore, the crux of the offence is that, such a filthy language / obscene language must have been uttered in a public place. The complainant nowhere talks about the obscene word being uttered in a public place and it was done inside the property. Therefore, the offence under Section 294(b) is not made out.

10. In order to commit an offense of criminal intimidation, the requirement of Section 503 must be satisfied. It is now a settled principle of law that, empty threats do not by itself make out an offense unless there is an evidence to show that the threat is a real one. Useful reference could be made to the judgment of this Court made in **P.Palanivel vs. Inspector of Police, Velur Police Station, Namakkal District** reported in **2012 (2) MLJ (crl) 154**.

11. In the considered view of this Court, the allegations that are made in the complaint/ protest petition does not constitute an offense for criminal intimidation. The respondent police have filed a closure report after finding that no offense has been made out. If the Court below wants to convert the protest petition into a private complaint, the Court ought to have applied its mind on the materials that were collected by the police during the investigation. In this case, there is absolutely nothing to show that the Court below, at the time of taking cognizance, has taken into consideration the materials that were collected by the police. If the Court below has not considered the same, then the cognizance that has been taken by the Court below suffers from non application of mind.

13.

14. In the result, the proceedings in S.T.C.No.793 of 2016 on the file of the learned Judicial Magistrate Court, Ambasamuthiram, Tirunelveli District, is hereby quashed, insofar as the petitioner is concerned. Accordingly, the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Assistant Registrar ()

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Sub Assistant Registrar (CS)

1. The Judicial Magistrate Court,
Ambasamuthiram, Tirunelveli District

2. The Inspector of Police,
Vickramasingapuram Police Station,
Tirunelveli District.
(Crime No.193 of 2013)

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

+1 CC to M/s.P.SUBBIAH, Advocate (SR-92861[F] dated 18/10/2019)

+1 CC to M/s.M.JEGADEESHPANDIAN, Advocate (SR-93347[F] dated 21/10/2019)

Order made in
Cr1.O.P. (MD) .No.8160 of 2017

Dated:

17.10.2019