

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 28.07.2020

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.OP.NO.1965 OF 2020

AND

CRL.MP.NOS.1226 & 1227 OF 2020

P.Rajkumar,
S/o.Pachaiyappan,
No.4/44A, Guddur Village,
Saamandhamalai Post,
Krishnagiri District

.... Petitioner/
Single Accused

Vs.

1.The State Represented by
Inspector of Police,
Gurubarapalli Police Station,
Krishnagiri District
(Cr.No.115 of 2019)

.. 1st Respondent/Complainant

2.G.Murugan,
S/o.Govindasamy,
Guddur Village,
Saamandhamalai Post,
Krishnagiri District

...2nd Respondent/Defacto
Complainant

Prayer :-

This Criminal Original Petition is filed under Section 482 of Cr.P.C. praying to call for the records relating to the CC.No.508 of 2019, on the file of Judicial Magistrate Court-II, Krishnagiri, and to quash the same.

For Petitioner : Mr.C.Prabakaran

For Respondents

For R1: Mr.S.Karthikeyan,

Additional Public Prosecutor

For R2: No Appearance

ORDER

The petition has been filed to quash the proceedings in CC.No.508 of 2019 on the file of the learned Judicial Magistrate-II, Krishnagiri having been taken cognizance for the offences under Sections 294(b) and 506(ii) of IPC in respect of Crime No.115 of 2019 on the file of the first respondent.

2. The case of the defacto complainant is that on the complaint lodged by the second respondent, the first respondent registered a case in Cr.No.115 of 2019 for the offences under Sections 294(b) and 506(ii) of IPC alleging that the petitioner is a neighbour of the second respondent, while being so, on 03.03.2019 when the petitioner was removing the trees nearby the house of the defacto complainant and it was questioned by the defacto complainant. There was a quarrel between them, in which the petitioner abused the defacto complainant by using filthy languages and also threatened him with dire consequences.

3. The learned counsel for the petitioner would submit that the entire complaint is a false complaint and the issues between the petitioner and the defacto complainant are civil in nature as such false case has been foisted as against the petitioner only to wreck vengeance as against the petitioner. The first respondent without even conducting enquiry filed final report under Sections 294(b) and 506(ii) IPC as against the petitioner, when there is absolutely no prima facie to make out a case for those offences as against the petitioner. Therefore, the entire charges are vitiated and the entire proceedings are liable to be quashed.

4. Per contra, the learned Additional Public Prosecutor submitted that on 03.03.2019, the petitioner by using JCB vehicle removed the trees in the land owned by the defacto complainant and it was questioned by him and the petitioner abused the defacto complainant with filthy languages and also threatened him with dire consequences. There is a specific allegation as against the petitioner to attract the offences and prayed for dismissal of the quash petition.

5. Heard, Mr.C.Prabakaran, learned counsel for the petitioner and Mr.S.Karthikeyan, Additional Public Prosecutor for the first respondent. Though notice was served, no one appeared on behalf of the second respondent.

6. The petitioner is the sole accused and has been charged for the offences under Sections 294(b) and 506(ii) of

IPC on the complaint lodged by the second respondent herein. According to the defacto complainant, on 03.03.2019 the petitioner came with JCB vehicle and removed the trees in the land belonging to the defacto complainant. When it was questioned by him, the petitioner abused him with filthy languages and also threatened him with dire consequences. To attract the offence under Section 294(b) of IPC, there must be an uttering of words to affect the person who lodged the complaint. In this regard it is relevant to extract the Section 294(b) of IPC.

"294. Obscene acts and songs -
Whoever, to the annoyance of others- (a)
does any obscene act in any public place,
or (b) sings, recites or utters any
obscene song, ballad or words, in or near
any public place, shall be punished with
imprisonment of either description for a
term which may extend to three months, or
with fine, or with both."

7. Admittedly, there is absolutely no words uttered by the petitioner as such to constitute the offence under Section 294 (b) of IPC, there is no averments and allegations. Further the charges do not show that on hearing the obscene words, which were allegedly uttered by the petitioner, the witnesses felt annoyed. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the petitioner annoyed others, it can not be said that the ingredients of the offence under Section 294(b) of IPC is made out. It is relevant to rely upon the judgment reported in 1996(1) CTC 470 in the case of K.Jeyaramanuj Vs. Janakaraj & anr., which held as follows :-

"To prove the offence under
Section 294 of IPC mere utterance of
obscene words are not sufficient but
there must be a further proof to
establish that it was to the
annoyance of others, which is lacking
in the case."

In view of the above facts, this judgment is squarely applicable to the present case.

8. On perusal of the charge and the statement of the witnesses, no criminal force was used by the petitioner on the second respondent. Therefore, entire proceedings is nothing but clear abuse of process of Court and it cannot be sustained as against the petitioner, and the petitioner need not go for ordeal trial

9. In view of the above discussion, this Criminal Original Petition is allowed and the proceeding in C.C.No.508 of 2019 on the file of the Judicial Magistrate Court-II, Krishnagiri is hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Gurubarapalli Police Station,
Krishnagiri District
2. The Judicial Magistrate Court-II,
Krishnagiri
3. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.25444

Cr1.OP.No.1965 of 2020

MR(CO)
CS/19/08/2020