

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.1426 of 2020
and Crl.M.P.Nos.859 & 860 of 2020

Arulmozhi Selvi
W/o.Palanisamy

...Petitioner/Accused No.2

Vs.

1. State rep by
The Inspector of Police
Kunnathur Police Station
Kunnathur Post
Tiruppur District.

...Respondent/Complainant

2. Getharani
W/o.Hariharan

...Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in C.C.No.303 of 2019 for the offence under Sections 379, 294(b), 323 and 506(i) IPC and under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 on the file of the Judicial Magistrate Court, Avinashi, and quash the same as illegal and abuse the processes of law.

For Petitioner : Mr.D.Veerasekaran

For Respondents

For R1 : Mr.S.Karthikeyan

Additional Public Prosecutor

For R2 : No Appearance

ORDER

This petition has been filed to quash the proceeding in C.C.No.303 of 2019 on the file of the learned Judicial Magistrate Court, Avinashi, thereby taken cognizance for the offences punishable under Sections 379, 294(b), 323 & 506(i) IPC and under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 as against the petitioner.

2. The learned counsel appearing for the petitioner would submit that there are totally two accused in which, the petitioner is arrayed as A2, who is none other than the wife of the first accused. The second respondent is own sister-in-law of

the petitioner viz., her husband's sister. Initially, the FIR was registered as against three persons for the offences under Sections 379, 294(b), 323, 506(i) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002. After completion of investigation, the first respondent filed final report only as against A1 and A2 by deleting the name of the third accused. The statement of the second respondent revealed that the petitioner along with her husband abused her with filthy language and also threatened her with dire consequences. In fact, the same allegations had been made as against their son in the FIR. However, the first respondent deleted his name and filed final report as against the petitioner and her husband alone. When the petitioner is also stand in the same footing of the third accused in the FIR, she is also entitled for the same benefit.

2.1. He further submitted that there is a property dispute between the brother and sister viz., the first accused and the second respondent herein. The alleged occurrence took place on 10.04.2019 and the complaint lodged by the second respondent only on 23.05.2019. Even assuming that the occurrences took place on 10.04.2019 and 22.05.2019, the avernments made in the complaint did not constitute any of the offences punishable under Sections 379, 294(b), 323 & 506(i) IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002. According to the second respondent, the petitioner along with her husband attacked the second respondent by hands. However, the second respondent did not sustain any injuries. Further he submitted that entire criminal case has been foisted as against the petitioner only for the reason that the second respondent did not give any share in the property. Therefore he sought for quashment of the FIR.

3. The learned Additional Public Prosecutor submitted that there are two accused in which the petitioner is arrayed as A2. Both the accused are charged for the offences under Sections 379, 294(b), 323 and 506(i) IPC and u/s. 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 on the complaint lodged by the second respondent. On 10.04.2019 the accused persons taken away the original documents from the second respondent and her mother, thereby committed the offence under Section 379 of IPC. On 22.05.2019, the accused persons in public, abused the second respondent and scolded her with filthy language and also threatened her with dire consequences. He further submitted that there are specific avernments as against the petitioner to attract all the offences. Therefore, he prayed for dismissal of the quash petition.

4. Heard Mr.D.Veerasekharan, learned counsel appearing for the petitioner and Mr.S.Karthikeyan, learned Additional Public

Prosecutor appearing for the first respondent. Though notice served to the second respondent and a counsel also entered appearance, no one is present to represent the second respondent before this Court by person or through pleader.

5. There are totally two accused in which the petitioner is arrayed as A2. A1 and A2 are husband and wife. The second respondent is none other than the sister-in-law of the petitioner. The second respondent got married with one Hariharan and thereafter she separated from her husband and driven back to her parents house. Therefore she is staying with her mother. In respect of the property, there is a dispute between the first accused and the second respondent herein. While being so, on 10.04.2019, the first accused had taken away the documents from the second respondent and her mother. On 22.05.2019, the petitioner along with her husband abused the second respondent and also threatened her with dire consequences.

6. Admittedly, the accused and the second respondent are very close relatives and the entire allegations are frivolous in nature and also there is a dispute between the first accused and the second respondent in respect of sharing their property. Further it is seen from all the allegations levelled as against the petitioner, no offence is made out under Sections 379, 294 (b), 323 and 506(i) IPC and u/s. 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002. Insofar as the offence punishable under Section 294(b) of IPC is concerned, 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 as follows :-

"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. It is also seen that there is absolutely no word 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.Jeyaramanuju 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."

The above judgment is squarely applicable to the present case and the allegations are frivolous in nature and the petitioner need not go for ordeal of trial. Therefore, this Court is inclined to quash the proceeding as against the petitioner alone.

8. Accordingly, this criminal original petition is allowed and the proceeding in C.C.No.303 of 2019 on the file of the learned Judicial Magistrate Court, Avinashi, is hereby quashed insofar as the petitioner alone. The trial Court is directed to proceed with the trial as against other accused person and dispose of the case as early as possible. Consequently, connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate,
Avinashi,
2. The Inspector of Police,
Kunnathur Police Station
Kunnathur Post
Tiruppur District.
3. The Public Prosecutor
Madras High Court,
Madras.

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(CO)
RV(10/11/2020)