

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 12.03.2020

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Criminal Original Petition No.4157 of 2015

1. V.Subramanian

2. Selvi

...Petitioners

Versus

1. The Inspector of Police,
Tiruppur Rural Police Station,
Tiruppur.
(Crime No.755 of 2013)

2. V.Muthusamy

...Respondents

Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records of the Criminal proceeding in PRC. No.23 of 2014 on the file of the learned Judicial Magistrate-II, Tiruppur and quash the same.

For Petitioner : Mr.P.M.Duraisamy
For respondents : Mr.S.Karthikeyan - R1
Addl. Public Prosecutor
Mr.V.Balaraman - R2

O R D E R

सत्यमेव जयते

The petitioners, who are the accused 1 and 2 in P.R.C.No.23 of 2014, pending on the file of the learned Judicial Magistrate-II, Tiruppur, for the offences under Sections 294(b) and 307 IPC, has filed this quash petition.

2. The second respondent is the defacto complainant and the first petitioner is his elder brother and the second petitioner is the wife of the first petitioner. The case of the prosecution is that on 07.11.2013 at about 3.15 P.M., the defacto complainant, namely, Muthusamy, Additional Superintendent of Police (Retired), had gone to visit his mother, aged about 90 years, residing at Andithottam, Rakkipalayam Division, Tiruppur.

The defacto complainant is residing at KKR. Nagar, Coimbatore. Therefore, he used to visit his mother frequently and used to buy provisions, vegetables and fruits for his mother periodically. Likewise, he had gone to visit his mother on 07.11.2013. At that time, the defacto complainant enquired about the health of his mother and questioned the first petitioner about not taking care of his mother and also causing cruelty to her. The wordy quarrel arose between the first petitioner and the defacto complainant. Due to which, the first petitioner took Aruval and attempted to attack the defacto complainant. At the time, the second petitioner instigated the first petitioner to assault the defacto complainant. The mother of the defacto complainant and the neighbours went inside the house and locked. Thereafter, the defacto complainant lodged a complaint against the petitioners before the respondent police at about 5.30 P.M. on the same day. On receipt of the complaint, the respondent police enquired the witnesses, recovered the weapon used by the accused. The respondent police registered a case in Crime No.755 of 2013 against the first and second petitioners and thereafter, filed a charge sheet for the offence under Section 294(b) and 307 IPC before the learned Judicial Magistrate II, Tiruppur and the same was taken on file in P.R.C.No.23 of 2014. During the pendency of the case, the petitioners have filed this Criminal Original Petition before this Court.

3. The learned counsel for the petitioners would submit that as per charge sheet there is no ingredients for attracting offence under Section 307 IPC. The copy of accident register, which is filed along with the charge sheet, does not show any injuries sustained by the injured, namely, the second respondent. The FIR itself does not speak about any injury caused by the first petitioner in the alleged attack. There is no wound certificate filed along with the charge sheet. When the defacto complainant admittedly had not sustained any injury on the alleged attack made by the petitioners, Section 307 of IPC would not attract. Therefore, the learned counsel prays to quash the same.

4. The learned counsel for the petitioners would submit that the defacto complainant is a retired Additional Superintendent of Police. He is residing with his family at Coimbatore. He never took care of his mother, who is aged about 90 years. When the first petitioner asked the defacto complaint about not taking care of his mother and was insisting for a share in the family property, the defacto complainant, a retired police officer, lodged a false complaint against the petitioners. When there is no prima facie case to attract the offences under

Section 294(b) and 307 IPC, the charge sheet filed by the first respondent warrants interference of this Court under Section 482 of Cr.P.C.

5. The learned Additional Public Prosecutor appearing on behalf of the first respondent would submit that in this case, the defacto complainant has lodged a complaint on 07.11.2013, at about 5.30 p.m. The incidence has taken place at about 3.15 p.m. On receipt of the complaint, immediately, FIR came to be registered. The defacto complainant was referred to the Government Hospital, Tiruppur for treatment. The doctor examined the defacto complainant. Thereafter, the respondent Police recorded the statement of LW2 and LW3, prepared rough sketch, observation mahazar and examined other witnesses and arrested the accused at about 8.15 p.m. on the same day. Based on the confession, weapon (Aruval) used by accused was recovered at about 9.15 p.m. by the first respondent. After getting opinion from the Doctor, charge sheet was filed, citing witnesses LW1 to LW14. LW1 is a retired Additional Superintendent of Police and there is no infirmity in his statement. The neighbours have spoken about the occurrence. The learned magistrate rightly took cognizance of the offence and issued summons to the accused. Pending committal, the petitioners have filed this quash petition, does warrants any interference.

6. The learned counsel for the second respondent/defecto complainant would submit that the first petitioner is the elder brother of the defacto complainant and the second petitioner is the wife of the first petitioner. The first petitioner and also another elder brother, namely, Natarajan, are enjoying the whole ancestral property in their native, neglected to take care of his mother. Further the mother was ill treated and she was denied access to use bathroom, which was questioned by the defacto complainant, he was attempted to be assaulted by aruval. The same was witnessed by the neighbours. There is no need to give a false complaint against his own brother and that to after retiring from the police service. If the respondent had motive to take away the family properties, he would have done so during his service, not after retirement. Hence, he prays to dismiss the quash petition filed by the petitioners.

7. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor appearing for the first respondent and the learned counsel for the second respondent/defacto complainant and also perused the materials placed before this court.

8. It is an admitted fact that the first petitioner is the elder brother of the defacto complainant and the second petitioner is the sister-in-law to him. The defacto complainant

is a retired Additional Superintendent of Police, he is settled in Coimbatore along with his family members. He visits his mother, occasionally. The first petitioner as well as the other brother, namely, Natarajan are residing in their native place. They are cultivating the family properties and taking care of their mother. It is the apprehension of the 2nd respondent that their mother was not properly taken care by the first petitioner and the other brother Natarajan. In the complaint, it is specifically mentioned that the defacto complainant's mother was not given access to use bathroom. She was locked inside the bathroom by the first petitioner. None of the witnesses have spoken about this fact. More specifically, LW9, Duraisamy, who is said to have informed about the happenings in the native have not mentioned about the same. The witnesses LW3 to LW8, are the tenants under LW1, their statement are in the nature of hearsay witnesses. LW9 Duraisamy categorically state that the incident had taken place on 07.11.2013 and he was informed by LW1. Further LW10 and LW11 are the witnesses for the observation mahazar and rough sketch. They have not spoken anything against the petitioner.

9. From the rough sketch, it is seen that there is no signature of attesting witnesses. LW12 and LW13 are witnesses for the arrest and recovery for the first petitioner. Further LW14, the Doctor, Government Hospital, Tiruppur, clearly state that there is no injury found on the defacto complainant. It is the claim of LW1 that he was feeling with pain on his back right shoulder. From the facts and materials produced by the respondent police, it is seen that there is no ingredients for the offence under Section 294(b) and 307 IPC. The statements of all the witnesses have been recorded on 07.11.2013. The entire investigation is completed on the same day. Though the statement have been recorded on 07.11.2013, the charge sheet filed by the respondent police before the learned Judicial Magistrate-II, Tiruppur is only on 26.05.2014, nearly after six months, which creates a doubt. In this case, the mother of the defacto complainant and the first petitioner has not been examined, which also creates a doubt. The entire case originates for not taking care of their mother.

10. On perusal of the materials and statement of witnesses, it is seen that the first petitioner and the defacto complainant are brothers. There is dispute between them with regard to the ancestral property. In view of the same, this Court finds that a case has been registered against the petitioners with an ulterior motive to spit venomal vengeance. Continuation of proceedings would amount to abuse of process of law.

11. In view of the discussions held above, the Criminal Original Petition is allowed the proceedings in PRC. No.23 OF 2014, on the file of the learned Judicial Magistrate-II, Tiruppur against the petitioners are hereby quashed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rli

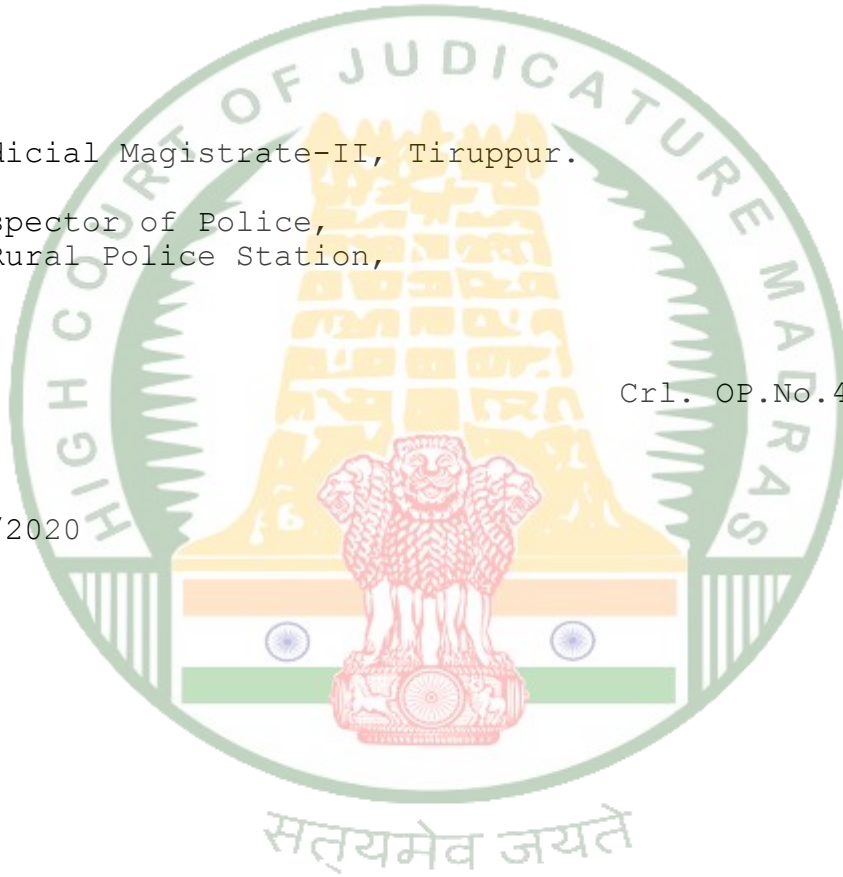
To

1. The Judicial Magistrate-II, Tiruppur.

2. The Inspector of Police,
Tiruppur Rural Police Station,
Tiruppur.

Crl. OP.No.4157 of 2015

MP(CO)
KKV/18/08/2020



WEB COPY