

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.4108 of 2020
and CrI.M.P.No.2329 of 2020

1. Murugaiyan
S/o. Natarajan

2. Amsa
W/o.Murugaiyan ... Petitioners/Accused Nos. 1 & 2

Vs.

1. The Union Territory of Puducherry
Rep by The Station House Officer (SHO),
Reddiarpalayam Police Station,
Reddiarpalayam,
Puducherry.
(Crime No.58 of 2018) ...Respondent/Dejure Complainant

2. Chitra
W/o. Ramamurthy ... Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to impugned FIR registered in Cr.No.58 of 2018 dated 14.05.2018 on the file of the first respondent namely the Station House officer (SHO), Mettupalayam Police Station Reddiarpalayam Police Station, Puducherry and quash all further proceedings.

For Petitioner : Mr.Prakash Adiapadam

For Respondents

For R1 : Mr.V.Balamurugane
Additional Public Prosecutor
(Pondy)

ORDER

This petition has been filed to quash the FIR in Cr.No.58 of 2018 dated 14.05.2018 on the file of the first respondent, thereby taken cognizance for the offences punishable under Sections 420, 423, 419, 462, 468, 294(b) and 506(ii) r/w 34 of IPC as against the petitioners.

2. The learned counsel appearing for the petitioners would submit that on the complaint lodged by the second respondent, the first respondent registered FIR in Crime No. 58 of 2018 for the offences under Sections 420, 423, 419, 462, 468, 294(b) and 506(ii) r/w Section 34 of IPC as against the petitioners. He further submitted that the first petitioner is a tenant under the second respondent. The allegations levelled as against the petitioners are that the second respondent owned property at No.40, Villianur Main Road, Opp to PSR Silks, Pavazha Nagar, Puducherry and she entered into a lease agreement dated 09.06.2012 with the first petitioner and leased out the entire ground floor of the said premises to the petitioners for running hotel for monthly rent of Rs.4,000/-. On 25.10.2013 the first accused had submitted application for electricity service connection and availed electricity service connection in the name of the second respondent. On verification, the second respondent came to under stand that in the application dated 25.10.2013, the signature of the second respondent was forged and submitted the application before the electricity department. When it was questioned by the second respondent, the petitioners abused her with filthy language and also threatened her with dire consequences.

2.1. He further submitted that admittedly the petitioners are tenant under the second respondent. The petitioners are very prompt on their payment of rent to the second respondent. Originally the premises was rented out to the petitioners on 20.06.2005 and paying a sum of Rs.15,000/- as advance at the monthly rent of Rs.825/-. At the time of leased out and handed over the possession, the property was vacant site and the right to put up construction was given to the petitioners. Thereafter, they are running hotel in the name and style of Sri Krishna Hotel after obtaining necessary permission and licence from the competent authorities. The lease agreement was renewed and the monthly rent was enhanced from Rs.825/- to Rs.1300/- and also increased advance from 15,000/- to 25,000/-. From time to time the lease agreement was renewed and the rent was also enhanced. Finally, the lease agreement was renewed on 09.06.2012 and the rent was fixed at the rate of Rs.4,000/- p.m., with advance of Rs.1,18,000/- and the same valid till 08.05.2013.

2.2. At this juncture, the second respondent wanted to evict the petitioners from the premises forcibly in illegal manner without following due process of law. Therefore, the second respondent was constrained to file R.C.O.P.No.16 of 2014 on the file of the Rent Control Court, Puducherry, seeking permission to deposit the rent. He also filed a suit in O.S.No.1202 of 2015 on the file of the learned I Additional District Munsif, Puducherry, for permanent injunction restraining the respondent

from dispossessing the petitioners from the premises without following due procedure of law. The said suit was decreed in favour of the petitioners by judgment and decree dated 01.12.2016.

2.3. While being so, again on 09.03.2017, the second respondent came to the premises along with henchmen and also with deadly weapon and attacked the petitioners and threatened them with dire consequences and tried to vacate the petitioners from the premises. Therefore the first petitioner lodged complaint on 09.03.2017 and the same has been registered in Crime No.43 of 2017 dated 11.03.2017 for the offences under Sections 323, 427, 448, 506(ii) r/w 34 of IPC as against the second respondent.

2.4. He further submitted that the second respondent thereafter filed petition to vacate the petitioners in R.C.O.P.No.20 of 2017 before the Rent Control Court, Puducherry, on the ground of willful default. In that proceedings, the second respondent was examined and she categorically deposed that she only spent money for water connection and electricity connection to the premises which is leased out to the petitioners and she only obtained both connections. When she admitted the said fact before the Court below, for vacating the petitioners by arm twisting method, the second respondent has attempted to give criminal colour by lodging the present false complaint with the above said allegations. Therefore, the FIR cannot be sustained as against the petitioners and prayed for quashment of the FIR.

3. Per contra the learned Additional Public Prosecutor submitted that the petitioners and the second respondent are having relationship of tenant and landlord, and the petitioners have forged the signature of the second respondent and obtained electricity connection for the premises, which was leased out to the petitioners herein, thereby they committed the offences under Sections 420, 423, 419, 462, 468, 294(b) and 506(ii) r/w 34 of IPC of IPC. When it was questioned by the second respondent, the petitioners abused her with filthy language and also threatened her with dire consequences. He further submitted that it is only FIR and it has to be investigated further and therefore at this stage it cannot be quashed and prayed for dismissal of this quash petition.

4. Heard Mr.Prakash Adiapadam, learned counsel appearing for the petitioner and Mr.V.Balamurugane, learned Additional Public Prosecutor (Pondy) appearing for the first respondent. Though notice served, no one is appeared on behalf of the second respondent by person through counsel.

5. There are totally two accused in which the petitioners are arrayed as A1 & A2 and both are husband and wife. Admittedly, the petitioners are tenant under the second respondent. The petitioners were inducted as tenant for the vacant cite on 20.06.2005 and permitted them to construct super structure. After constructing super structure, the petitioners obtained electricity service connection in the name of the second respondent herein. Time to time, the rent agreement was renewed and in the year 2013, the second respondent wanted the petitioners to vacate the premises and hand over vacant possession. The second respondent also tried illegally to vacate the petitioners as such the petitioners were constrained to file a suit for injunction in O.S.No.1202 of 2015 as against the second respondent and the same was allowed with prayer restraining the second respondent from dispossessing the petitioners from the premises without following due process of law.

6. The petitioners also filed a petition in R.C.O.P.No.16 of 2014 before the Rent Control Court, Puducherry, for seeking permission to deposit the rent to the Court. The second respondent also filed R.C.O.P.No.20 of 2017 for vacating the petitioners on the ground of willful default. On perusal of the deposition of the second respondent in R.C.O.P.No.16 of 2014 on the file of the Rent Controller No.II, Puducherry, the second respondent categorically deposed that she only obtained water and electricity connection for the leased out premises. She also stated that huge money was spent for getting water connection and electricity service connection for the premises. Whereas in the petition filed by the second respondent in R.C.O.P.No.20 of 2020, the second respondent stated that her signature was forged and filed application for water connection and electricity service connection. Thereafter, the second respondent lodged the present impugned complaint as against the petitioners. Therefore, it is very clear that there is a dispute between the petitioners and second respondent in respect of vacating the premises, which was rented out in favour of the petitioners herein to run the hotel business. On the complaint lodged by the first petitioner, FIR was registered in Crime No.43 of 2017 as against the second respondent for the offences under Sections 323, 427, 448, 506(ii) r/w 34 of IPC. The petitioners also filed suit as against the second respondent. Therefore, the present complaint is nothing but clear abuse of process of law and no offence is made out as against the petitioners. There is absolutely no sufficient ground for proceedings as against the petitioners herein.

7. The learned counsel appearing for the petitioners relied upon the judgment of the Hon'ble Supreme Court of India reported in 1992 (1) SUPP (SCC) 335 in the case State of Haryana vs. Bajanlal which held as follows :-

"..... where the allegations in the FIR or complaint are absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceedings against the accused. Accordingly, the plain reading of entire FIR it is highly improbable and no prudent person can ever reach a just conclusion that there is sufficient ground for proceedings against the accused.

.....

If the allegations made in the FIR or the complaint, even if they are taken at their face value and accepted in their entirety do no prima facie constitute any offence of make out a case against the accused the impugned FIR is liable to be quashed. Accordingly while applying the principle in this case the plain reading of entire FIR it palpably, pellucidly, clearly and glaringly demonstrate and display that no cognizable offence is made out."

In view of the above dictum laid down by the Hon'ble Supreme Court of India, the present impugned FIR is nothing but after thought and no prima facie case made out to constitute any of the offences as alleged by the second respondent herein.

8. Insofar as the offences 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."

Admittedly, there is absolutely no words uttered by the

petitioners 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 petitioners, 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 petitioners 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 case on hand and the present FIR cannot be sustained as against the petitioners and it is liable to be quashed.

9. In view of the above discussion, this Criminal Original Petition is allowed and the FIR in Crime No.58 of 2018 on the file of the first respondent is hereby quashed. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Station House Officer (SHO),
Reddiarpalayam Police Station,
Reddiarpalayam,
Puducherry.
2. The Public Prosecutor
Madras High Court,
Chennai.

CRL.O.P.No.4108 of 2020
and Crl.M.P.No.2329 of 2020

SRA (CO)
SP(06/11/2020)