

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.6356 of 2020  
and Crl.M.P.No.3517 of 2020

S.Sourirajan,  
S/o.Srinivasan,  
No.2/53, North Street,  
Tholuthalangudi,  
Inam Senniyanallur,  
Therizhandur,  
Nagapattinam District -609 808. ... Petitioner

Vs.

1. The State Rep by  
The Inspector of Police,  
All Women Police Station,  
Chidambaram,  
Cuddalore District.
2. G.Sundararajan,  
S/o.Govindarajan,  
B-3, Prabhu Kudiyiruppu,  
No96, South Cart Street,  
Chidambaram - 608 001. ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records and quash all the proceedings in C.C.No.7 of 2020 on the file of the learned Judicial Magistrate No.II, Chidambaram in Crime No.1 of 2020 on the file of the Inspector of Police, AWPS Chidambaram, Cuddalore.

For Petitioner : Mr.P.Kumaresan

For Respondents

For R1 : Mr.S.Karthikeyan

Additional Public Prosecutor

For R2 : Mr.T.Saravanan

ORDER

This petition has been filed to quash the proceeding in C.C.No.7 of 2020 on the file of the learned Judicial Magistrate, Chidambaram, thereby taken cognizance for the offences punishable under Sections 498(A), 294(b), 506(i) of IPC and 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 five accused in which, the petitioner is arrayed as fourth accused. On the complaint lodged by the second respondent, the first respondent registered a case in Crime No.1 of 2020, and after completion of investigation, filed final report and the same has been taken cognizance in C.C.No.7 of 2020 for the offences punishable under Sections 498 (A), 294(b), 506(i) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002.

2.1. He further submitted that as far as the petitioner is concerned, the first respondent filed the charge sheet only for the offence under Section 294(b) of IPC. The petitioner is aged about 84 years and he is the grandfather of the first accused. There was a family dispute between the first accused and the second respondent herein. He further submitted that even according to the case of the prosecution, on the date of alleged occurrence, the petitioner scolded the second respondent with filthy language inside the house of one Velmurugan, his family friend at Chidambaram. Therefore, the offence under Section 294 (b) of IPC would not attract as against the petitioner. He further submitted that the petitioner is the grandfather of the first accused and he is nothing to do with the alleged offence and prayed for quashment of the proceedings as against the petitioner.

3. Per contra, the learned counsel appearing for the second respondent filed counter and submitted that the petitioner is arrayed as fourth accused and he abused the second respondent and her daughter with filthy language in front of the other accused person and family members. In fact, the first respondent on receipt of the said complaint issued C.S.R.No.226 of 2019 to the second respondent and after the direction of this Court, the first respondent registered the FIR and under the supervision of the Additional Deputy Superintendent of Police, completed investigation and filed final report. There is specific overt act as against the petitioner to attract the offence under Section 294(b) of IPC. He also relied upon the judgment of the Hon'ble Supreme Court of India reported in (2020) 3 SCC 317 in the case of Rajeev Kourav v. Baisahab, which held as follows :-

"The conclusion of the High Court to quash the criminal proceedings is on the basis of its assessment of the statements recorded under Section 161 of Cr.P.C. Statement of witnesses recorded under Section 161 of Cr.P.C., being wholly inadmissible in evidence cannot be taken into consideration by the Court, while

adjudicating the petitioner filed under  
Section 482 of Cr.P.C."

Therefore he prayed for dismissal of this petition.

4. The learned Additional Public Prosecutor appearing for the first respondent would submit that the second respondent lodged complaint alleging that the marriage between the first accused and the second respondent's daughter was solemnized on 20.05.2018 and thereafter they went to United State of America. It is further alleged that the second respondent's daughter informed him over phone that the first accused continuously demanding dowry and also harassed her based on the instigation of the other accused persons. In the mean time, the second respondent's daughter and the first accused were returned to Chennai for attending the petitioner's Sathabishegam function. After function, the first accused left the second respondent's daughter at Chidambaram and went to USA, since the second respondent's daughter had lodged the Police Complaint at Chitalapakkam Police Station, Chennai and the same was registered as CSR.No.392 of 2019. It is further alleged that the other accused persons closed the house and they were not traceable and hence the second respondent approached one Velmurugan and went to his house at Chidambaram along with his daughter. During that time, the petitioner and other accused demanded dowry and also abused the second respondent and her daughter with filthy language and threatened them with dire consequences. On that complaint, the first respondent registered a FIR in Crime No.1 of 2020 and after completion of investigation filed charge sheet in C.C.No.7 of 2020 before the learned Judicial Magistrate-II, Chidambaram, and the same is pending for trial. There are specific overt act as against the petitioner and therefore, he sought for dismissal of the quash petition.

5. Heard Mr.P.Kumaresan, learned counsel appearing for the petitioner, Mr.T.Saravanan, learned counsel appearing for the second respondent and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the first respondent.

6. There are totally five accused in which, the petitioner is arrayed as fourth accused. According to the second respondent, his daughter was married with the first accused on 20.05.2018. Thereafter they went to USA and the second respondent's daughter was informed him over phone that the first accused continuously demanding dowry and harassed her. Thereafter on 06.08.2019, the daughter of the second respondent was returned to India to attend the petitioner's Sathabishegam function to be held on 31.08.2019 and she also attended the said function. In the mean while, the second respondent's daughter lodged complaint and she was issued C.S.R.No.392 of 2019 by the

Chitalapakkam Police Station. When the second respondent visited to Velmurugan house, the petitioner along with other relatives were there and they demanded further dowry to lead the matrimonial life with the first accused. There was a word quarrel between them for which the second respondent lodged complaint and the same was registered in Crime No.1 of 2020 for the offences punishable under Sections 498(A), 294(b), 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, in which the petition was charged for the offence punishable under Section 294(b) of IPC alone.

7. On perusal of the statement recorded under Section 161 of Cr.P.C., all are stereo type and the first respondent mechanically recorded the statements. All are deposed that the occurrence took place in the house of Velmurugan, in which the petitioner uttered filthy language as against the second respondent and his daughter and also threatened them 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, 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."

8. 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.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 therefore, this Court is inclined to quash the proceedings.

9. Accordingly, this Criminal Original Petition stands allowed and the proceedings in C.C.No.7 of 2020 on the file of the learned Judicial Magistrate No.II, Chidambaram, is hereby quashed as against the petitioner alone. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.II,  
Chidambaram

2. The Inspector of Police,  
All Women Police Station,  
Chidambaram,  
Cuddalore District.

3. The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.T.Saravanan, Advocate, S.R.No.31393

CRL.O.P.No.6356 of 2020  
and Crl.M.P.No.3517 of 2020

PA(CO)  
RV(03/12/2020)

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