

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.02.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.32213 of 2014

and

Crl.M.P.No.1 of 2014

B. Mohan

... Petitioner

Vs.

The State rep. by Inspector of Police,
B1 Bazaar Police Station,
Crime No.1019 of 2013,
Coimbatore City.

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the C.C.No.271 of 2014 on the file of the learned Judicial Magistrate No.V, Coimbatore, quash the same.

For Petitioner : Mr.N.Manokaran

For Respondent : Mr.V.Saradha Devi,
Government Advocate [Crl. Side]

ORDER

Criminal Original Petition filed to quash the proceedings in C.C.No.271 of 2014 pending on the file of the Judicial Magistrate Court No.V, Coimbatore.

2.The petitioner has been arrayed in the Final Report as A4. The Final Report has been filed by the respondent Police for an offence under Section 505(2), 506(i) and 188 of IPC and Section 71(XIX) and 71(A) of the Tamil Nadu City Police Act, 1888.

3.The learned counsel for the petitioner submitted that the Final Report is not maintainable as against any of the accused persons under Section 188 of IPC and the Court below ought not to have taken cognizance of the Final Report for this offence. In order to substantiate his arguments, the learned counsel for the petitioner brought to the notice of this Court, the judgment in Jeevanandham and Others .Vs. State rep. by Inspector of

Police and another reported in 2018 2 LW (Crl) 606. The learned counsel further submitted that if this provision goes, then there is no offence made out as against A4.

4.The learned counsel for the petitioner further developed his arguments by submitting that insofar as A4 is concerned, he has been roped in as accused person only on the ground that he has arranged for the meeting. The learned counsel submitted that the allegations made in the Final Report do not make out a case for abatement. Therefore, the learned counsel concluded his arguments submitting that the Final Report as against the petitioner is not sustainable and the proceedings have been pending right from the year 2014 onwards.

5.The learned Additional Public Prosecutor submitted that the abusive words that have been used during the meeting has been reflected in the Final Report and had clearly makes out an offence u/s.505(2) IPC. The learned counsel submitted that the petitioner after giving an undertaking to the Police that the meeting will be conducted without causing any disturbance or any disharmony to any other religion or sect, the said undertaking has been violated and therefore the petitioner will have to necessarily face the trial before the Court below.

6.This Court has carefully considered the submissions made on either side and also the materials available on record.

7.The offence under Section 188 IPC which has been taken cognizance by the Court below, is totally unsustainable and the said charge has to be necessarily quashed in view of the judgment, referred supra, cited by the learned counsel for the petitioner.

8.Insofar as the offence under Section 506(i) of IPC is concerned, the reading of the entire Final Report does not make out an offence of criminal intimidation. It is a settled principle of law that empty threats by itself does not make out an offence of criminal intimidation unless there is some material to show that the threat is a real one. Useful reference can be made to the judgment of this Court made in P.Palanivel .Vs. Inspector of Police, Velur Police Station, Namakkal District, reported in 2012 2 MLJ (Crl) 154.

9.Therefore, the charge under Section 506(i) is also not sustainable against any of the accused persons.

10.That leaves this Court with the charge of abatement under Section 109 of IPC. In order to constitute an offence of abatement, the petitioner must be shown to have indulged in

instigating or conspiring or intentionally aiding the offence committed by the other accused persons. The only allegation that have been made against the petitioner is that he has arranged for the meeting and nothing more. The actual speech was made only by A-3 to A-5 and there are no materials to show that there was any positive act on the side of the petitioner to have abated the crime committed by A-3 to A-5. The test of abatement as formulated by the Hon'ble Supreme Court in Kishori Lal .Vs. State of M.P. reported in 2007 10 SCC 797, is not fulfilled in the present case.

11. In view of the above, the proceedings pending as against the petitioner/A4 before the Court below is an abuse of process of Court and the same requires interference by this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

12. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.271 of 2014, pending on the file of the learned Judicial Magistrate-V, Coimbatore, is hereby quashed, insofar as the petitioner is concerned. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Judicial Magistrate No.V,
Coimbatore.

2. The Inspector of Police,
B1 Bazaar Police Station,
Coimbatore City.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Manokaran, Advocate Sr.14463

Cr1.O.P.No.32213 of 2014

pa[co]
srg 16/04/2020