

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.20228 of 2019
& Crl.M.P.Nos.10366 & 10367 of 2019
and
CRL.O.P.No.2795 of 2020
& Crl.M.P.Nos.1683 & 1684 of 2020

1. G.Selvamoorthy
2. Shanthi
3. Nithya

... Petitioners/Accused 1 to 3 in
Crl.O.P.No.2022 of 2019

Hariharan

... Petitioner/Accused in
Crl.O.P.No.2795 of 2020

Vs.

1. The State rep by
The Sub Inspector of Police,
South Police Station,
Vandavasi P.S.,
Tiruvanamalai District.
(Cr.No.184 of 2014)

..Respondent/Complainant in both the Crl.O.Ps.

2. K.Govindaraj

... Respondent/Defacto Complainant in both Crl.O.Ps.

PRAYER in Crl.O.P.No.20228 of 2019: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records of the respondent police relating to the charge sheet in C.C.No.8 of 2019 on the file of the learned Judicial Magistrate, Vandavasi, and quash the same.

PRAYER in Crl.O.P.No.2795 of 2020: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records of the respondent police relating to the charge sheet in J.C.No.29 of 2019 on the file of the Juvenile Justice Board at Tiruvanamalai and quash the same insofar as it relates to the petitioner herein/4th accused.

For Petitioner
in both Crl.O.Ps. : Ms.Nadhiya
For Mr.J.Muthukumaran
For Respondents
in both Crl.O.Ps.
For R1 : Mr.S.Karthikeyan
Additional Public Prosecutor.
For R2 : No appearance

COMMON ORDER

The petition in Crl.O.P.No.20228 of 2018 has been filed to quash the proceedings in C.C.No.8 of 2019 on the file of the learned Judicial Magistrate, Vandavasi, thereby taken cognizance for the offences under Sections 294(b) and 506(ii) of IPC as against the petitioners.

2. The petition in Crl.O.P.No.2795 of 2020 has been filed to quash the proceedings in J.C.No.29 of 2019 on the file of the Juvenile Justice Board, Tiruvanamalai, thereby taken cognizance for the offences under Sections 294(b), 323 and 506(ii) of IPC as against the petitioner.

3. The learned counsel appearing for the petitioners in both cases would submit that the petitioners in Crl.O.P.No.20228 of 2019 are arrayed as A1 to A3 in C.C.No.8 of 2019 on the file of the learned Judicial Magistrate, Vandavasi and the petitioner in Crl.O.P.No.2795 of 2020 is the sole accused in J.C.No.29 of 2019 on the file of the Juvenile Justice Board, Tiruvannamalai. He further submitted that on the complaint lodged by the second respondent herein the first respondent registered a case in Crime No. 184 of 2014 for the offences under Section 294(b), 355, 323, 506(i) of IPC alleging that on 03.05.2014, the petitioners quarrelled with the second respondent herein and also abused him with filthy language. It is also alleged that all the accused persons assaulted the second respondent with hands.

3.1. He further submitted that the second respondent is none other than the father of the first petitioner in Crl.O.P.No.20228 of 2019 and other petitioners are wife and children of the first petitioner. The second respondent had two wives and there is a dispute with regard to partition of their property. In this regard, on 03.05.2014 there was a quarrel between the second petitioner and other brother's wife of the first petitioner herein, in which the second respondent intercepted. Thereafter the second respondent lodged the false complaint as against the petitioners herein. In fact, the brother of the first accused insisted the second respondent to execute a will in his favour to grab the house property and shops thereon. Therefore, the first petitioner in Crl.O.P.No.20228 of 2019 had filed suit in O.S.No.130 of 2012

on the file of the Sub Court, Cheyyar, as against the second respondent for injunction. After filing the said suit, the second respondent and other family members attacked first petitioner on 08.10.2013, as such he sustained injury and admitted in hospital and the same was registered in Crime No.373 of 2013.

3.2. He further submitted that while pending the suit in O.S.No.130 of 2012, the second respondent executed a Will dated 12.06.2013, allotting one house site in the village to the first petitioner without allotting any ancestral property to him. Therefore, the first petitioner withdrawn the suit in O.S.No.130 of 2012 and filed an another suit in O.S.No.128 of 2013 on the file of the Sub Court, Cheyyar, challenging the Will dated 12.06.2013 executed by the second respondent. Therefore, the present complaint has been falsely foisted as against the petitioners and no occurrence had took place as alleged by the second respondent. He further submitted that there is absolutely no ingredient to constitute the offence under Sections 294(b), 323 and 506(ii) of IPC and prayed for quashment of both the proceedings.

4. The learned Additional Public Prosecutor submitted that the first and second petitioners in Crl.O.P.No.20228 of 2019 are husband, wife and other petitioners are their children. Since the petitioner in Crl.O.P.No.2795 of 2020 is a minor at the time of occurrence, the respondent filed a separate charge sheet and the same has been taken cognizance by the Juvenile Justice Board, Tiruvannamalai. The allegations are that on 03.05.2014, all the petitioners have attacked the second respondent with hands and also scolded him with filthy language. Therefore, the second respondent sustained injuries and he was treated as out patient in the hospital. There are specific allegations as against the petitioners as such, all the points raised by the petitioners have been considered only during trial by let in evidence. Therefore, he prayed for dismissal of the quash petition.

5. Heard Ms.Nadhiya, learned counsel appearing for the petitioners and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the first respondent in both cases. Though notice served to the second respondent and name printed in the cause list, no one is appeared by person through pleader.

6. There are totally four accused persons in which the petitioners in Crl.O.P.No.20228 of 2019 have been arrayed as A1 to A3. Since the petitioner in Crl.O.P.No.2795 of 2020 was minor at the time of occurrence, separate proceeding has been initiated and he is the sole accused in J.C.No.29 of 2019. Admittedly, all the petitioners and the second respondent are close relatives and there is a dispute between them in respect of partition in the property. Already the first petitioner filed suit in O.S.No.130 of 2012 as against the second

respondent on the file of the Sub Court, Cheyyar and subsequently, the said suit was withdrawn. Again the first petitioner filed a suit in O.S.No.128 of 2013 on the file of the Sub Court, Cheyyar, challenging the Will executed by the second respondent. In fact on the complaint lodged by the first petitioner a case has been registered in Crime No.373 of 2013 as against the second respondent and other family members.

7. It is also seen from the complainant lodged by the second respondent that there is no averments to attract the offence under Section 294(b) of IPC, since the occurrence took place inside the house of the first petitioner. 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.

"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 word uttered by the petitioners as such to constitute the offence under Section 294(b) of IPC, and there is no averment and allegation. 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."

In above judgment is squarely applicable to the present case and the averments made in the complaint do not constitute the offence under Section 294(b) of IPC.

9. Insofar as the offence under Section 323 of IPC is concerned, it is alleged that the petitioners have attacked the second respondent with their hands. On perusal of the statement of the Doctor, he stated that all the injuries

sustained by the second respondent are simple in nature and he was treated as out patient. Further there is a property dispute between the family member and in this regard the first petitioner also filed a suit in O.S.No.128 of 2013 on the file of the Sub Court, Cheyyar and the same is pending. Considering the above facts and circumstances, the entire proceedings are nothing but clear abuse of process of Court and it cannot be sustained as against the petitioners.

10. In view of the above discussions, both the Criminal Original Petitions are allowed and the proceedings in C.C.No.8 of 2019 on the file of the learned Judicial Magistrate, Vandavasi and the proceedings in J.C.No.29 of 2019 on the file of the Juvenile Justice Board, Tiruvanamalai are hereby quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-III)

//True copy//

Sub Assistant Registrar

rts

To

1. The Judicial Magistrate,
Vandavasi
2. -do- Through The Chief Judicial Magistrate,
Thiruvannamalai.
3. The Proceeding Officer,
Juvenile Justice Board
Tiruvanamalai
4. The Sub Inspector of Police,
South Police Station,
Vandavasi P.S.,
Tiruvanamalai District.
5. The Public Prosecutor,
Mardas High Court,
Chennai.

Crl.O.P.No.20228 of 2019
& Crl.M.P.Nos.10366 & 10367 of 2019
and CRL.O.P.No.2795 of 2020
& Crl.M.P.Nos.1683 & 1684 of 2020

GJ (CO)

<https://hcservices.courts.gov.in/hcservices/>
GJI (09/11/2020)