



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 26.08.2020

Pronounced on : 04.09.2020

CORAM:

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Crl.O.P.(MD)No.22976 of 2015

and

M.P.(MD)No.1 of 2015

WEB COPY

1. R. Heiz Dawson
 2. R.Peter Perinbaraja
 3. Arul Gnanam
 4. Vijaya Xavier Parthiban
 5. Androos
- : Petitioners/Accused Nos.1 to 5

Vs.

- 1.The Inspector of Police
Palayamkottai Police Station
Tirunelveli District
(Crime No.1125 of 2013)
 - 2.Dr.Maraikumar Chellaraj
- : 1st Respondent/Complainant
- : 2nd Respondent/De-facto
Complainant

Prayer: Petition is filed under Section 482 of the Code of Criminal Procedure praying to call for the records relating to the case in C.C.No. 298 of 2014 on the file of the learned Judicial Magistrate No.I, Tirunelveli and quash the same.

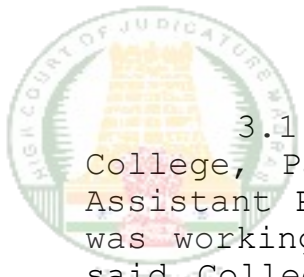
For Petitioners : Mr.AR.Jeya Rhuthran
For Respondent No.1 : Mr.K.Suyambulinga Bharathi,
Government Advocate (Crl.side)
For Respondent No.2 : Mr.Rajeswaran

ORDER

This petition has been filed to quash the criminal proceedings in C.C.No.298 of 2014 pending on the file of the learned Judicial Magistrate No.I, Tirunelveli.

2. Totally, there are five accused and the petitioners are arrayed as Accused Nos.1 to 5. The petitioners stood charged for the offences punishable under Sections 147,294(b),448,342,323,506 (ii) of the Indian Penal Code. Now, to quash the said criminal proceedings, the present petition has been filed.

3. The brief facts leading to the filing of the present quash petition are as follows:



3.1. The *defacto* complainant is the Principal of St.John's College, Palayamkottai. The first petitioner/A1 was working as an Assistant Professor in English Department, the second petitioner/A2 was working as an Assistant Professor in History Department in the said College. On 19.10.2013, both A1 and A2 were suspended and a departmental enquiry is pending against them. Subsequently, on 19.12.2013, at about 08.35 a.m., both of them, on their own, signed the attendance register available in the college and the same was reported to the *defacto* complainant and he refused to permit them to attend the College. Thereafter, at about 9.00 a.m., both A1 and A2 along with the other co-accused, namely A3, who was working as Assistant Professor in Physics Department and A4, another Professor working in Maths Department and A5, who was working as Assistant Professor in History Department, abused the *defacto* complainant with filthy language and also wrongfully confined him in his room. In spite of request made by the *defacto* complainant to release him to attend the class, A1 to A3 attacked him with hands and also pushed him down, once again, all the accused shouted at him and abused him with filthy language and confined him in his room, then, the *defacto* complainant called the police at about 4.00 pm.

3.2. After the receipt of information, the Deputy Superintendent of Police, Palayamkottai and the Inspector of Police, Palayamkottai Police Station came to the College and rescued the *defacto* complainant and sent him to the Government Hospital for treatment. Based on the complaint given by the *defacto* complainant, a crime was registered for the aforesaid offences and on completion of investigation, the respondent police filed the final report before the learned Judicial Magistrate No.I, Tirunelveli. The learned Magistrate has taken cognizance of the offences and issued summons to the petitioners herein. Now, to quash the criminal proceedings, the present petition has been filed under Section 482 of the Code of Criminal Procedure.

4. The learned counsel for the petitioners would submit that a false case has been foisted against the petitioners and the complaint has been lodged with *malafide* intention to send the petitioners out of the College. Perusal of entire materials would go to show that no *prima facie* case has been made out against the petitioners and the learned Magistrate, without applying his mind, had mechanically taken cognizance for the aforesaid offences. He would further submit that, insofar as the offence under Section 294 (b) of the Indian Penal Code is concerned, there is no material available on record to show that the petitioners abused the *defacto* complainant in public place and caused annoyance to the general public. As far as the offence under Section 323 of the Indian Penal Code is concerned, there is no injury on the *defacto* complainant and as such, the said offence is also not made out against the petitioners. It is also stated that based on the complaint given by the petitioners, a counter case has also been



registered against the *defacto* complainant in Crime No.420 of 2014 for the offences punishable under Sections 294(b) and 506(i) of the Indian Penal Code, but, no investigation was conducted in that case. To sum up, as no *prima facie* case has been made out against the petitioners for the offences as aforesaid, the criminal proceedings are liable to be quashed.

5. Per contra, the learned Government Advocate (Criminal Side) appearing for the first respondent/State would submit that the petitioners are working as Assistant Professors in various Departments in St.Johns College. Being agitated over the suspension of A-1 and A-2, all the accused wrongfully restrained the *defacto* complainant, who is the Principal of the said College and abused him with filthy language and also attacked him, caused injuries and also wrongfully confined him in his room. The evidence collected during investigation would disclose a *prima facie* case against the petitioners and there is no reason to quash the criminal proceedings at the initial stage. Hence, he prayed for dismissal of the present petition.

6. I have considered the rival submissions and also perused the records carefully.

7. The *defacto* complainant is the Principal of St.John's College and the petitioners/accused were working as Assistant Professors in various departments in the said College. While so, A-1 and A-2 were suspended. Pending Departmental enquiry, while suspension order was in force, A-1 and A-2 said to have signed the attendance register and the same was reported to the *defacto* complainant and he refused to permit A1 and A2 to attend the College. Being agitated over the same, all the petitioners unlawfully assembled together and abused the *defacto* complainant with filthy language in the College premises. Further, they have also trespassed into the office room of the *defacto* complainant, confined him in his room from morning 9.00 a.m., to evening 4.00 p.m., attacked him with their hand, pushed him down and also criminally intimidated him. Hence, based on the complaint given by the Principal, a crime has been registered and after completion of investigation, the respondent police laid the final report, the learned Magistrate has taken cognizance of the case for the aforesaid offences.

8. The Law is well settled that, the power vested under Section 482 of the Code of Criminal Procedure is to be used sparingly in quashing the criminal proceedings. At this preliminary stage, the Court cannot appreciate the evidence or materials collected during investigation to find out as to whether the charges levelled against the accused stand proved. The Court can only see whether uncontroverted allegations made in the complaint *prima facie* establish the offence against the accused.



9. Before going into the merits of the case, it is useful to refer to the judgment of the Hon'ble Supreme Court in **State of Haryana v. Bhajan Lal, 1992 Suppl (1) SCC 335**, wherein, the Hon'ble Supreme Court has laid down broad guidelines for quashing a criminal proceedings, which are as follows:-

"(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to



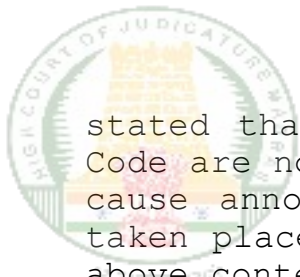
private and personal grudge."

10. The criminal proceedings cannot be quashed, merely because there was previous enmity between the *defacto* complainant and the accused. The allegation of *malafide* intention will be revealed only at this time of examining the witnesses during trial and not at the preliminary stage. Mere allegation of *malafide* is not a ground for quashing the criminal proceedings, and at this stage, the Court is not call upon to enquire probability, reliability or genuineness of the allegations made therein. Whether the allegations are true or not cannot be gone into at this stage. The Honourable Supreme Court, in number of cases, has consistently held that if the uncontroverted allegations *prima facie* made out a case against the accused, criminal proceedings cannot be quashed. At this juncture it is relevant to refer to the judgment of the Hon'ble Supreme Court in **State of Maharashtra .v. Ishwar Piraji Kalpatri and others, 1996(1) Supreme Court Cases. 542**, wherein the Honourable Supreme Court has held as follows:

"22.... Allegations of malafides may be relevant while judging the correctness of the allegations or while examining the evidence. But the mere fact that the complainant is guilty of mala fides would be no ground for quashing the prosecution".

11. In the instant case, complaint filed by the *defacto* complainant *prima facie* reveals that all the accused persons trespassed in the office room of the *defacto* complainant and abused him with filthy language and also wrongfully confined him causing grievous hurt. The materials collected during investigation also clearly reveal the same. Apart from the statement of the *defacto* complainant, the statement of one Kanaga Jeya, who was working as Superintendent in the said College before whom A1 and A2 said to have signed the attendance register while they were under suspension, clearly reveals the involvement of the petitioners in this crime and she is also an eyewitness to the said occurrence. That apart, one Amis Abraham, who was working as Lecturer in English Department and another one Kathiravan, who as working as Assistant Professor in the same College, are the eyewitnesses to the said occurrence and they have clearly spoken about the occurrence. One Asmi, who was working as a Doctor in the Government Hospital, Tirunelveli has given treatment to the *defacto* complainant and she has also given a statement with regard to the injuries sustained by the *defacto* complainant. She has also issued an Accident Register to the effect that the injuries sustained by the *defacto* complainant are minor in nature. Thus, the materials collected during investigation *prima facie* made out the offence against the accused.

12. The learned counsel for the petitioners, relying on the judgment of the Honourable Supreme Court reported in **Pawan Kumar -v- State of Haryana and another** reported in **1996 (SCC) (Cri. 583)**,



stated that the ingredients of Section 294(b) of the Indian Penal Code are not made out in the case and the petitioners herein did not cause annoyance to any body and the occurrence is said to have taken place in the Principal room, which is not a public place. The above contention cannot be countenanced, for the simple reason, that the materials are available to show that the occurrence had taken place in the College premises, which is a public place, the petitioners said to have abused the *defacto* complainant with filthy language, confined him in his room, attacked him and also caused injury in the College where number of students are studying. The College being a reputed one where number of students are studying, the act of the petitioners will definitely cause annoyance to others. In such circumstances, this Court is of the considered view that the ingredients of the offence under Section 294(b) of the Indian Penal Code *prima facie* made out against the petitioners herein.

13. The next contention of the petitioners is that since there is no injury found place in the body of the *defacto* complainant, the offence under Section 323 of the Indian Penal Code, is also not made out against the petitioners. Section 321 of IPC, defines voluntarily causing hurt which is punishable under Section 323 of IPC. In this regard, it is worthwhile to extract the provision under Section 321 of the Indian Penal Code hereunder:

"321.Voluntarily causing hurt- Whoever does any act with the intention of thereby causing hurt to any person, or with the knowledge that he is likely thereby to cause hurt to any person, and does thereby cause hurt to any person is said" voluntarily to cause hurt"

14. In the case at hand, the *defacto* complainant refused to permit A1 and A2 from attending the College as they were under suspension. Being aggrieved, A1 and A2 said to have attacked the *defacto* complainant and forcibly pushed him down. He was also taken to the Government Hospital where he was examined by the Doctor, and she has stated that the *defacto* complainant sustained minor injuries. The above said circumstances clearly reveal the intention of the petitioners to cause hurt to the *defacto* complainant. Even assuming that they have no intention to cause hurt, they have knowledge about their act which is likely to cause hurt and hence, it cannot be said that the offence under Section 323 of the Indian Penal Code is not made out.

15. Coming to the next contention of the petitioners that the complaint has been given with *malafide* intention as already held, it cannot be considered at this stage. The learned counsel for the petitioners also submitted that the petitioners have given complaint against the *defacto* complainant, which has been registered for the offences under Sections 294(b) and 506(i) of the Indian Penal Code and no investigation has been conducted. However, the



learned Government Advocate (CrI. Side) submitted that the investigation has been conducted in that complaint and the same has been closed as 'Mistake of Fact'.

16. Considering the facts and circumstances of the case as narrated above and also from the materials available on record, this Court finds no merit in the present quash petition and the same deserves dismissal.

17. In the result, this Criminal Original Petition stands dismissed. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

- 1.The Judicial Magistrate No.I,
Tirunelveli
2. The Inspector of Police
Palayamkottai Police Station
Tirunelveli District
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
CrI.O.P.(MD)No.22976 of 2015
Dated: 04.09.2020

AP(11/09/2020) 7P 4C