



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:07.10.2020

CORAM

THE HONOURABLE Mr.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD).No.19120 of 2016

and

Crl.M.P.(MD).No.9576 of 2016

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Sekar

... Petitioner/Sole Accused

Vs

The State Rep.by

1.The Sub Inspector of Police,
Sindhupatti Police Station,
Madurai District.
(Crime No. 98 of 2014)

... Respondent/Complainant

2.T.Shamuvel, R.V.Singh

... Respondent/Informant

PRAYER: Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to quash the charge sheet in C.C.No.86 of 2016, on the file of the Judicial Magistrate Court, Thirumangalam, Madurai District.

For Petitioner : Mr. R.Murugappan

For 1st Respondent : Mr.KR.Bharathi Kannan
Government Advocate (Crl Side)

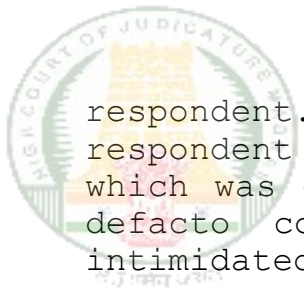
For 2nd Respondent : Mr.J.M.Hassamal Sazar

ORDER

This petition has been filed to quash the C.C.No.86 of 2016, on the file of the Judicial Magistrate Court, Thirumangalam, Madurai District, as against the petitioner herein.

2.The learned counsel appearing for the petitioner submitted that the second respondent has filed a private complaint and the same was forwarded under Section 156(3) of IPC and on the direction of the Court below, the first respondent police has registered the complaint for the offence under Sections 447, 294(b) and 506(i) of IPC, alleging that the petitioner has trespassed into the second respondent's land and removed the wooden logs and abused the second respondent using filthy language and also criminally intimidated him. After completion of investigation, the first respondent Police has filed a final report and the same has been taken cognizance in C.C.No.86 of 2016 by the trial Court.

3.The learned counsel appearing for the second respondent submitted that the second respondent felt to survey his land, due to which, the Surveyor has surveyed the land and fixed the boundaries. The said portion occupied by the petitioner, belonged to the second



respondent. In respect of the same, on 29.12.2015, when the second respondent has requested the petitioner to vacate the said place, which was occupied by him, at that time, the petitioner abused the defacto complainant using filthy language and also criminally intimidated him.

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4. The learned counsel appearing for the petitioner submitted that to attract the offence under Section 294(b) of IPC, there must be 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, which reads as under:

"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."

5. Admittedly, there is absolutely no words uttered by the petitioner as such to constitute the offence under Section 294(b) of IPC and there is no averments and allegations to that effect. 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 any legal evidence to show that the words uttered by the petitioner annoyed others, it cannot be said that the ingredients of the offence under Section 294(b) of IPC is made out. In this regard, It is relevant to rely upon the judgment of this Court in **Crl.O.P. (MD) No.11030 of 2014 (Abdul Agis Vs. State through the Inspector of Police)**, which reads as follows:-

"7. It is seen from the statements recorded under Section 161(3) of Cr.P.C. of the second respondent/ defacto complainant that it does not contain any obscene words, which were uttered by the petitioner herein and the entire allegations are very simple in nature. It is also seen from the statement of one Uthami, that the petitioner threatened the defacto complainant with dire consequences when he dashed the defacto complainant. The entire allegations are trivial in nature. Further, to attract the offence under Section 506(i) of I.P.C., there was a threatening only by words. As pointed by the learned counsel appearing for the petitioner, the threat should be a real one and not just a mere word when the petition uttering does not exactly mean what he says, and also when the person to whom threat is



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launched does not feel threatened actually. Therefore, the offences under Sections 294(b) and 506(i) of I.P.C. are not made out as against the petitioner herein and also the entire criminal proceedings is clear an abuse of process of Court. Therefore, this Court is inclined to quash the entire proceedings." :-

6.In view of the above facts, this judgment is squarely apply to the present case. Insofar as the offence under Section 447 of IPC is concerned trespass will not mitigate the punishment for an offence under this Section. In this regard, it is relevant to extract the Section 447 of IPC as follows :-

*"447. Punishment for criminal trespass -
Whoever commits criminal trespass shall be punished with imprisonment of either description for a term which may extend to three months, with fine or which may extend to five hundred rupees, or with both."*

On perusal of the charge and the statement of the witnesses, the petitioner has not criminally trespassed into the second respondent's land. Therefore, entire proceedings is nothing but a clear abuse of process of Court and it cannot be sustained as against the petitioner.

7.In view of the above discussion, this Criminal Original Petition is allowed and the proceeding in C.C.No.86 of 2016 on the file of the Judicial Magistrate Court, Thirumangalam, Madurai District is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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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,
Thirumangalam,
Madurai District.

<https://hcservices.ecourts.gov.in/hcservices/>



2.The Sub Inspector of Police,
Sindhupatti Police Station,
Madurai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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VB (23.11.2020) 4P 4C