



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.12.2020

CORAM:

WEB COPY

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

Crl.O.P. (MD) No.19148 of 2016

and

Crl.M.P. (MD) Nos.9611 of 2016 and 343 of 2018

1.M.Eswari
2.C.Muthuchamy
3.Leelavathi
4.Sundar
5.Senthilkumar
6.Prabhakaran

... Petitioners/Accused Nos.1 to 6

Vs.

1.The State Rep.by
The Inspector of Police,
Avaniyapuram Police Station,
Madurai District.
(Cr.No.07 of 2016)

...1st Respondent/Complainant

2.V.Pandi

... 2nd Respondent /Defacto Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the entire records pertaining to the case in C.C.No.174 of 2015 pending on the file of the Judicial Magistrate No.VI, Madurai, Madurai District and quash the same.

For Petitioners : Mr.R.Anand

For R1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.side)

For R2 : Mr.T.Lajapathi Roy

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.174 of 2015 on the file of the learned Judicial Magistrate No.VI, Madurai.



2. Heard Mr.R.Anand, the learned counsel appearing for the petitioners and the Mr.K.Suyambulinga Bharathi, learned Government Advocate(Crl.Side) appearing for the first respondent and Mr.T.Lajapathiroy, learned counsel appearing for the second respondent.

WEB COPY

3. There are totally six accused in the complaint lodged by the second respondent in Crime No.07 of 2016. The petitioners herein are arrayed as A1 to A6. The first petitioner already died and the entire charges stands abated as against the first petitioner. The first respondent completed investigation and filed a final report before the learned Judicial Magistrate No.VI and the same has been taken cognizance in C.C.No. 174 of 2015.

4. The crux of the complaint is that the first accused and the wife of the second respondent are sisters. They have a property owned by their father and after his death, the entire property was in possession and enjoyment of the first accused, as if the first accused and the wife of the second respondent herein had partitioned the property and the partition deed dated 31.01.1979 has been registered before the Sub Registrar, Madurai impersonating the wife of the second respondent. It is further alleged that the first accused filed a suit in O.S.No.470 of 1993 on the file of the Additional District Munsif, Madurai, for declaring that the whereabouts of the wife of the second respondent were not known and to declare as civil death by engaging the counsel on behalf of the second respondent and obtained a collusion decree. On the basis of the said decree, all the accused persons grabbed the entire property and they were in possession and enjoyment of the property and when it was questioned by the second respondent, he was threatened with dire consequences.

5. Admittedly, the first accused filed a suit in O.S. No. 417 of 1993 on the file of the Additional District Munsif Court, Madurai, for declaring the wife of the second respondent as civil death. Now the first accused is no more and the entire charges stand abated. Insofar as the other accused persons are concerned, the second accused's husband and the first accused and other are their legal heirs. Further allegation is that the first accused impersonating the wife of the second respondent herein, registered a partition deed and thereby valuable properties were allotted in favour of the first accused and the remaining properties were allotted to the second respondent's wife and thereby they cheated the the second respondent without allotting any share to him, since the second respondent is the only legal heir of deceased/wife. The wife of the second respondent died only on 25.03.2013, whereas the first accused filed a suit in the year 1993 itself and obtained a decree of civil death.

6. The learned counsel for the petitioner also submitted that <https://hccservicesrecorder.in/jsp/recordView.jsp> of his wife the second respondent filed a suit for



partition in O.S.No. 89 of 2013 as against all the accused persons and the same was dismissed by judgment and decree dated 29.01.2016. It is relevant to extract the findings of the judgment, which reads as follows:

"9. The defendants 2 to 5 filed additional written statement specifically contending that the plaintiff is not entitled to claim share in the plaint schedule properties as per Section 15(2)(a) of Hindu Succession Act, 1956.

Section 15(2)(a) of Hindu Succession Act, 1956 as extracted below:

15, General Rules of Succession in the case of female Hindus:

(2) Notwithstanding anything contained in sub Section (1)(a) any property inherited by a female Hindu from her father or mother shall devolve in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter not upon other heirs referred to in sub section(1) in the order specified therein, but upon the heirs of the father"

10. In the plaint it is stated that after the death of father or Meenakshi @ Meenambal she got right over the plaint schedule property . The bare reading of Section 15(2)(a) of Hindu Succession Act 1956 clearly states that if the property is inherited by a female Hindu from her father or mother in the absence of any child, the property of the deceased shall go to the legal heirs of father. The husband will not get any right over the property inherited by her from her father.

11. An Anandilal Jhariya -V.Ranial reported in AIR 2010 Madhya Pradesh 21, the Honourable High Court of Madhya Pradesh has held when property is inherited by a daughter from her father and such daughter dies issueless, the property will devolve upon her father's heirs and not upon her husband or his family.

12. For the above said reasons I hold that the plaintiff is not entitled to any right over the plaint schedule properties in view of the section 15(2)(a) of Hindu Succession Act 1956. Thus the issue is answered accordingly

7. The trial Court dismissed the suit for the reason that the second respondent and his wife have no issues and therefore, the property which is inherited by a female Hindu from her father or mother in the absence of any child, the property of the deceased shall go to the legal heirs of father. The husband will not get any right over the property inherited by her from her father. The legal heirs of the wife of the second respondent/father is none of the accused herein. Though the second accused has no



share in the property, which is inherited from the parents of the first accused, they had issues namely, accused 3 to 6 herein, who are entitled for share in the property, which is inherited by the first accused from her parents.

8. Now, the first accused is no more and the entire charges are only as against the first accused since other accused are not parties to the registered partition deed dated 31.01.1979 vide Document No.2734/ 1979 and also not a party to the suit filed by the first accused in O.S.No.470 of 1993 on the file of the Additional District Munsif Court, Madurai. In fact they had not even stood as witness or no role was played by them in both documents. According to the second respondent allegations are with the partition deed dated 31.01.1979 and the judgment and decree passed in O.S.No. 470 of 1993 and therefore the offences under Sections 468,471,419,420 and 147 of IPC are not attracted as against the petitioners herein.

9. Insofar as the offences under Sections 294(b) and 506(i) of IPC are concerned the entire allegations are bald and vague and no specific allegations are levelled as against the petitioners herein. In this regard, it is relevant to extract 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 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."

10. Therefore, no offence is made out as against the petitioners herein and the entire impugned proceedings is nothing but clear abuse of process of law and there is no possibility to convict the petitioners herein.



11. In view of the above discussions the Criminal Original Petition is allowed and the proceedings in C.C.No.174 of 2015 on the file of the learned Judicial Magistrate No.VI, Madurai is hereby quashed. Consequently connected miscellaneous petitions are closed.

WEB COPY

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

aav

To

1.The Judicial Magistrate No.VI,
Madurai, Madurai District.

2.The Inspector of Police,
Avaniyapuram Police Station, Madurai District.

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

+1cc to Mr.T.Lajapathi Roy, Advocate Sr.No.25886

CrI.O.P. (MD)No.19148 of 2016
and

CrI.M.P. (MD)Nos.9611 of 2016
and 343 of 2018

15.12.2020

MJ(CO)

NR (07/01/2020) 5P : 5C