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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2020

CORAM

THE HONOURABLE **MR. JUSTICE C.SARAVANAN**

CRL.O.P (MD) No.5549 of 2017

and

CrI.M.P.(MD) No.3971 of 2017

K.Selvam

... Petitioner/ Sole Accused

Vs.

1.The Inspector of Police,
Vadasary Police Station,
Kanyakumari District.
Crime No.932 of 2015.

... 1st Respondent/Complainant

3.A.R.Subash Kumar

... 2nd Respondent/Defacto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records relating to the case in C.C.No.227 of 2016 on the file of the learned Judicial Magistrate No.II, Nagercoil and quash the same.

For Petitioner

: Mr.M.Suresh

For R1

: Ms.Anandha Devi

Government Advocate (CrI. Side)

For R2

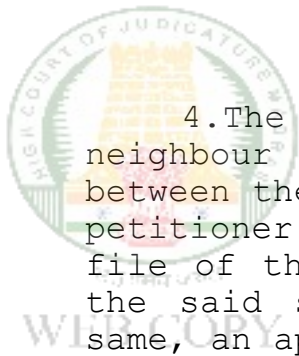
: No appearance

ORDER

This petition has been filed to quash the proceedings in C.C.No.227 of 2016 on the file of the learned Judicial Magistrate No.II, Nagercoil.

2.The second respondent/defacto complainant was a counsel for one Paul Suyambu, against whom, the petitioner had filed a suit and the same was pending. Since the second respondent/defacto complainant defended the said Paul Suyambu in the suit, the petitioner is alleged to have trespassed into the house of the second respondent/defacto complainant and had intimidated his wife. Based on the complaint of the second respondent, a case was registered in Crime No.942 of 2009 as against this petitioner. After conclusion of investigation, a final report was filed as against this petitioner for the offences under Sections 452, 294(b) and 506(ii) of IPC. The learned Judicial Magistrate has taken the final report in C.C.No.227 of 2016, as against the same, the petitioner has filed the present petition.

3.Heard the learned counsel appearing for the petitioner as well as the learned Government Advocate (Criminal Side).



4.The case of the petitioner is that the petitioner is a neighbour of the second respondent. There was a civil dispute between the petitioner and one A.Paul Suyambu and Panchupazham. The petitioner had therefore filed a suit in O.S.No.388 of 2012 on the file of the Principal District Munsif, Nagercoil, against them and the said suit was decreed ex parte on 16.07.2015. As against the same, an application to set aside the ex-parte decree was also filed by the defendant Paul Suyambu on 29.09.2015 and the same was pending. While so, on 21.09.2015, the petitioner is said to have trespassed into the house of the second respondent, abused his wife and also criminally intimidated her and thus, a complaint was lodged on the same day, but was registered only on 26.11.2015.

5.The learned counsel appearing for the petitioner submits that even according to the prosecution, the occurrence is said to have taken place in the house of the second respondent/defacto complainant and at that time, the defacto complainant was also not present. Section 294(b) IPC contemplates that if anybody sings, recites or utters any obscene song, ballad or words, in or near any public place, then offence is attracted. Admittedly, even according to prosecution case, the occurrence has taken place inside the house of the second respondent/defacto complainant and therefore, the offence under Section 294(b) also would not attract.

6.With regard to the offence under Section 506(ii) IPC, the learned counsel for the petitioner submits that for the occurrence said to have taken place on 21.09.2015, the complaint was lodged only on 26.11.2015 and therefore, the offence under Section 506(ii) of IPC is also not made out.

7.Though the second respondent was served with notice, his name has also been printed, there is no representation for the second respondent / defacto complainant.

8.The learned Government Advocate (Crl. Side) submitted that there are materials available to proceed with the case as against the petitioner herein and at the threshold, the criminal proceedings cannot be quashed and the charges have been framed against the petitioner. Therefore, the truth will be determined after a full-fledged trial. Further, she would submit that the trial has also been commenced and hence, he prayed for dismissal of the petition.

9.I have considered the submission made on either side and also perused the available records.

10.On a perusal of records, I am of the opinion that no criminal liability would be fastened on the petitioner. Hence, this criminal original petition is liable to be allowed.

11.In fine, the criminal Original Petition is allowed and the
<https://hcservices.mca.gov.in/hcservices/> C.C.No.227 of 2016 on the file of the learned



Judicial Magistrate No.II, Nagercoil is hereby quashed against the petitioner. Consequently, the connected criminal miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

vsg

To

- 1.The Judicial Magistrate No.II,
Nagercoil.
- 2.The Inspector of Police,
Vadasary Police Station,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to M.Suresh Advocate in SR NO 11040/2020

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KB(08.07.2020) 3P 5C