



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 13.01.2020

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THE HONOURABLE MR.JUSTICE B.PUGALENDHI

Crl.O.P(MD)No.6921 of 2017

and

Crl.M.P(MD)No.4653 and 4654 of 2017

1.J.Srinivasan

2.J.Maruthavanan ... Petitioners/Accused Nos.4 and 3

Vs

1.The State represented by
the Inspector of Police,
Thallakulam Police Station,
Madurai City,
Madurai District.
[Crime No.786 of 2014]

... 1st Respondent/ Complainant

2.Shanmugavalli

... 2nd Respondent /defacto Complainant

Prayer: Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in C.C.No.65 of 2017 on the file of the learned Judicial Magistrate No.II, Madurai, Madurai District and quash the proceedings as against the petitioners.

For Petitioners: Mr.A.Thiruvadikumar

For Respondent : Mr.R.Anandharaj,

No.1 Additional Public Prosecutor

For Respondent : No appearance

No.2

ORDER

This petition is filed by accused Nos.3 and 4 in C.C.No.65 of 2017 pending on the file of the learned Judicial Magistrate No.II, Madurai to quash the proceedings pending against them.

2.When the matter was taken for hearing on 13.12.2019, there was no representation for the second respondent/defacto complainant. However, in order to provide one more opportunity to the second respondent/defacto complainant, the case was adjourned to 03.01.2020, 10.01.2020 and 13.01.2020. However, there was no representation for the second respondent/defacto complainant on the above said dates. Therefore, this Court having no other option,



disposes this case by hearing the learned Counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State.

3. At the instructions of the second respondent/ defacto complainant, a case was registered as against A1, namely, Manikkavel and others for the offence under Sections 294(b) and 506(ii) IPC and the respondent Police after completing the investigation has also filed a final report as against these petitioners for the offence under Sections 294(b) and 506(ii) IPC.

4. The learned Counsel for the petitioners submits that there is no reference about the petitioners that they instigated the A1 to commit the offence. Even the case of the prosecution is that there was a civil suit pending between the parties, on account of which, A1 went to the house of the complainant on 17.07.2014 at about 4.30am, abused her in filthy language and also criminally intimidated. According to the learned Counsel for the petitioners, there is no specific reference about the words uttered by the accused and moreover, the presence of the petitioners in the place of occurrence is not averred in the complaint, however, they have been implicated as accused in the final report.

5. The learned Additional Public Prosecutor appearing for the State submits that the names of the petitioners are found place in the complaint and the witnesses have also stated about the presence of the petitioners during the investigation and therefore, the final report was filed against these petitioners also.

6. There is no representation for the second respondent/ defacto complainant though several opportunities was provided.

7. The occurrence is said to have taken place at about 4.30 am and there is no reference that at that odd hours whether there was any other person available at the place of occurrence and in their presence A1 has uttered the words. Further the case of the prosecution against these petitioners is that they have only instigated A1 to commit the offence and there is no reference that these petitioners have also indulged in the offence along with A1 and uttered the words as against the second respondent / defacto complainant.

8. The learned Counsel for the petitioner has submitted that in the absence of any reference with regard specific words uttered in the complaint or in the final report, Section 294(b) would not attract.

9. The complaint in this case is also lodged belatedly after 8 days. The occurrence has taken place on 17.07.2014 and the complaint was lodged on 25.07.2014. If the complainant has really



has felt that she was intimidated, then she would have lodged the complaint immediately.

10.The learned Counsel for the petitioners in support of his contention relied on the judgment of the Hon'ble Supreme Court in *Pawan Kumar Vs State of Haryana and Another*, reported in 1996 SCC (Cri) 583, wherein it has been held as follows:

"9.In order to secure a conviction the provision requires two particulars to be proved by the prosecution, i.e., (i) the offender has done any obscene act in any public place or has sung, recited or uttered any obscene songs or words in or near any public place; and (ii) has so caused annoyance to others. If the act complained is not obscene, or is not done in any public place, or the song recited or uttered is not obscene, or is not sung, recited or uttered in or near any public place, or that it causes no annoyance to others, the offence is not committed."

11.In this case also, Neither in the complaint nor in the final report, there is specific averment as against these petitioners that they have uttered any words in the place of occurrence as against the respondent / complainant. Moreover, there is no reference with there was some other public present at the place of occurrence and annoyed by the conduct of the petitioners. In the absence of the above materials and in view of the decision taken by the Hon'ble Supreme Court in the above cited judgment, this Court is inclined to quash the charge under Section 294(b) IPC.

12.The learned Counsel for the petitioner also relied upon the judgment of this Court in *S.Selva Kumar Vs. State*, reported in (2015) 4 CTC 109, wherein, this Court by referring a catena of judgments in this regard has held as follows:

"11.Considering the scope of Section 506(i) of the Penal Code, 1860 in Srinivasan V.State by Sub Inspector of Police, 2009 (4) MLJ (Crl) 1118, in paragraph No.11, this Court has held in the following manner:

11. In order to attract the ingredients of Section 506 of IPC, the intention of the accused must be to cause alarm to the victim. Mere expression of words without any intention to cause alarm would not suffice. To constitute an offence under Section 506 of IPC, it must be shown that the person charged actually threatened another with injury to his person, reputation or property with an intention to cause alarm.



9.As rightly submitted by the learned Counsel appearing for the petitioner that it is the specific case of the defacto complainant that filthy language was used by the petitioner. Beyond this, she has not stated anything. She has not stated that other witnesses are eye witnesses. It has been merely stated that the said occurrence is known to others, who is said to have been present in the place of occurrence. Even anyone of the witnesses have not spoken about the specific words used by the petitioner. Thus, the complaint is totally vague, bereft of any materials, particular attracting the provisions of Section 294(b). It is the further case of the defacto complainant that the petitioner only made a mere oral threat. Thus, he has not used any weapon or arm. Though one of the witnesses have stated that the petitioner has pushed the defacto complainant, there is no corroborative evidence to prove the same and that it is not even supported by the defacto complainant".

13.The fact remains that the complaint was lodged after 8 days. If the complainant felt the threat, the complaint would have been lodged immediately after the alleged occurrence. Moreover, there is a civil dispute pending between the parties. Applying the principle laid down in the above cited case, the charge under Section 506 (ii)IPC is quashed.

14.Accordingly, the proceedings in C.C.No.65 of 2017 pending on the file of the learned Judicial Magistrate No.II, Madurai is quashed.

15.In the result, this criminal original petitions is allowed and the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

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/ /2020

Sub Assistant Registrar(CS)

Dsk

To

1.The Judicial Magistrate No.II,
Madurai.

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



2.The Inspector of Police,
Thallakulam Police Station,
Madurai City,
Madurai District.

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

Cr1.O.P(MD)No.6921 of 2017

13.01.2020

VB(04.02.2020) 5P 4C