

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.07.2021

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

**Crl.O.P.No.8911 of 2018 and
Crl.M.P.No.4606 of 2021**

Annadurai

... Petitioner

Vs.

1.Palanisamy

2.The Inspector of Police,
Fairlands Police Station,
Salem.

... Respondents

Prayer: Petition filed under Section 482 of Cr.P.C., to call for the records in Crl.R.C.No.2 of 2016 dated 10.01.2017 on the file of II Additional District Judge, Salem upsetting the finding in C.M.P.NO.6486 of 2014 in C.C.No.164 of 2014 on the file of the Judicial Magistrate V, Salem and set aside the same as illegal.

For Petitioner : Mr.R.Sankarasubbu

For RR2 : Mr.C.E.Pratap
Government Advocate (Crl.Side)

ORDER

The petitioner has filed this petition seeking to call for the records in Crl.R.C.No.2 of 2016 dated 10.01.2017 on the file of II Additional District Judge, Salem and quash the same.

2. The case of the prosecution is that the defacto complainant is a retired Forest Officer and his daughter-in-law is Priya and she was trying for the post of Government Teacher, after writing the exam conducted by the Teachers Training Board and at that time, the defacto complainant had acquaintance with one Ponmozhi (1st accused) wife of the petitioner herein/A-2, who was working as Office Superintendent at Government Press, Salem and the 1st accused assured the defacto complainant to get his daughter-in-law a Teacher Post. Believing her words, the defacto complainant gave a sum of Rs.2,70,000/- totally on different occasions. However the 1st accused did not get any job as promised. Therefore on 22.04.2013 when the defacto complainant approached the accused persons for return back of money, they told that they would tell that they did not receive money and further they threatened the defacto complainant that if he did anything they would give a false case against the defacto complainant.

Apprehending over the same, the defacto complainant lodged a complaint before the Fair Land Police Station, but no action was taken and thereafter a complaint was given before the Deputy Commissioner, Salem but even thereafter no action was taken and therefore stating the entire facts, he has filed a complaint under Section 200 Cr.P.C. before the learned Judicial Magistrate No.5, Salem.

3. The learned Magistrate forwarded the same to Fairlands Police Station under Section 156(3) Cr.P.C and after receipt of the complaint, the Sub Inspector of Police, Fairlands Police Station registered a case in Cr.No.116/2014 under Sections 460, 409, 420 and 120B IPC. The respondent Police had conducted investigation and filed Charge Sheet before the learned Judicial Magistrate No.5, Salem and the said Trial Court has ordered to issue summons to the accused persons and they appeared before the Judicial Magistrate. In the meanwhile, the petitioner herein had come forward with a discharge petition contending that there was no prima facie evidence or material against him, so as to frame charge under Sections 406, 409, 420 and 120B IPC. The learned Judicial Magistrate having found

that no *prima facie* evidence and materials were available against the petitioner, discharged him from the case.

4. Aggrieved by the same, the defacto complainant has come forward with a Revision Petition before the II Additional District Judge at Salem, challenging the order dated 03.08.2015 passed by the Judicial Magistrate No.5, Salem, in C.M.P.No.6486/2014 in C.C.No.164/2014, whereby after considering the entire materials, the Appellate Court has allowed the said Revision Petition and challenging the said impugned order, the present petition is filed.

5. Mr.Sankara Subbu, learned counsel appearing for the petitioner submitted that though the allegation against the petitioner is that he has threatened the defacto complainant with dire consequences, there is no evidence to support the said version by way of documentary evidence or by witnesses. The Trial Court by considering the factual matrix, had discharged the petitioner from the Criminal case. However, in a Revision Petition, challenging the order of the Trial Court, filed by the defacto complainant,

though the Appellate Court held that there is no specific allegation against the petitioner, however, set aside the order of the Trial Court, holding that the words uttered by the accused would definitely constitute an offence of criminal intimidation under Section 506 IPC and directed the learned Judicial Magistrate to frame necessary charge on the basis of the materials available before him. The said finding of the Appellate Court is wholly unsustainable for the reason that mere verbal threat without any intimidation would not attract the offence under the said Section. Therefore, the Lower Appellate Court has erroneously reached a conclusion as if some ingredients are available to bring him within the fold of Section 506 IPC. Accordingly, he prays for quashment of the impugned order.

6. There is no representation on behalf of the respondents.

7. Considering the pendency of the proceedings, I am inclined to consider the matter based on the available records before this Court.

8. The issue before this Court is as to whether the Discharge Order

passed by the Trial Court is valid or not. This Court has perused Section 239 Cr.P.C. A perusal of the above said provision reveals that the Trial Court, upon considering the police report and the documents sent with it under Section 173 and making such examination, if any, of the accused as the Magistrate thinks necessary and after giving the prosecution and the accused an opportunity of being heard, the Magistrate considers the charge against the accused to be groundless, he shall discharge the accused, and record his reasons for so doing. However in the present case, the petitioner has been charged for the offence under Sections 406, 409, 420 and 120 B IPC and there is statement in the FIR as well as in the Charge Sheet as if the petitioner and his wife threatened the defacto complainant, which definitely constitutes an offence under Section 506 IPC. In fact, learned counsel appearing for the petitioner has not disputed the fact that there was verbal threatening meted out to the defacto complainant by the petitioner. However, erroneously the trial court failed to frame a charge u/s 506 IPC. Whether the act of the petitioner would fall squarely within intimidation as prescribed u/s 506 IPC is a matter for trial. This Court, at the threshold cannot preclude the framing of charge u/s 506 IPC as ordered by the

appellate court as the petitioner has threatened the defacto complainant.

9. In the aforesaid circumstances, this Court is of the view that the Appellate Court has rightly reached a conclusion after proper appreciation of all material facts directing the trial court to frame a charge against the petitioner u/s 506 IPC, which, on the available materials is a just and proper conclusion arrived at by the appellate court and therefore, this Court is not inclined to interfere with the impugned order. Accordingly, the Criminal Original Petition is dismissed, confirming the order dated 10.01.2017 made in Crl.R.C.No.2 of 2016. Consequently connected miscellaneous petition is closed.

19.07.2021

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Speaking Order/ Non Speaking Order

Index: Yes/ No

Internet: Yes/ No

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M.DHANDAPANI,J.

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To

1.The Inspector of Police,
Fairlands Police Station,
Salem.

2.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.



Crl.O.P.No.8911 of 2018

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