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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.09.2021

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.16799 of 2020

and

CrI.M.P.Nos.6485, 6487 of 2020 & 7975 of 2021

P.Praburam

...Petitioner

Versus

1. State by:

Sub-Inspector of Police
Avinankudi Police Station
Cuddalore District
(Crime No.20 of 2019)

2. M.Prabhakaran

...Respondents

Prayer: This Criminal Original Petition is filed under Section 482 of Criminal Procedure Code praying to call for the records in STC.No.157 of 2019 on the file of the Judicial Magistrate, Thittakkudi, Cuddalore District and quash the charges registered against the petitioner/accused in the above case STC.No.157 of 2019 on the file of the District Munsif-cum-Judicial Magistrate, Thittakkudi.

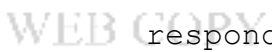
For Petitioners : Mr.R.Rajasekaran

For Respondents : Mr.A.Damodaran for R1
Additional Public Prosecutor

: Mr.Nandhakumar for R2
Legal Aid Counsel

O R D E R

This Criminal Original Petition has been filed to call for the records in STC.No.157 of 2019 on the file of the Judicial Magistrate, Thittakkudi, Cuddalore District and quash the charges registered against the petitioner/accused in the above case STC.No.157 of 2019 on the file of the District Munsif-cum-Judicial Magistrate, Thittakkudi.



3. The gist of the case is that the second respondent/defacto complainant had lodged a complaint with the first respondent stating that he is an electrical contractor and one Thangadurai introduced him to the petitioner and they had entered into an agreement for doing electric work. As per the agreement and contract, the defacto complainant along with others had carried out electrical work in 1) Femina Shopping Mall, Tiruchy, 2) Reliance Shopping Mall, Erode and 3) Star Private Hospital, Pudhukottai. The defacto complainant was carrying on the electrical contract work from April, 2014 and the contract work completed in the year 2016. In all these three works, the petitioner has to pay a sum of Rs.93,24,826/-, out of which, he had paid only a sum of Rs.41,11,430/- and balance amount of Rs.52,13,396/- is due. The petitioner promised that he would pay the above amount within a period of six months and thereafter, he failed to pay the amount. The co-workers, who were engaged by the defacto complainant, were demanding wages from him for their work. Hence, he called the petitioner in his mobile and requested for the balance payment. At that time, the petitioner abused and threatened him and refused to give the due amount to the defacto complainant. Further he threatened the defacto complainant that if he insists for any payment, he would be done away.

4. On 20.12.2018, the defacto complainant filed a complaint before the Judicial Magistrate, Thittakkudi under Section 156(3) of Cr.P.C. and the same was forwarded to the first respondent police, and an FIR was registered in Crime No.20 of 2019 on 16.03.2019 against the accused/petitioner herein for the offence under Sections 294(b), 506(i) and 507 IPC. Thereafter, on conclusion of the investigation, charge sheet was filed against the petitioner for the same alleged offences under Sections 294(b) and 506(i) IPC only on 20.05.2019 in STC.No.157 of 2019.

5. The learned counsel for the petitioner has stated that the defacto complainant, cannot collect exorbitant amount further no orders could be obtained through the Civil Court, hence, with an intention to grab the amount illegally, a false private case was given by the defacto complainant. As per the contract agreement, the petitioner has to pay only a sum of Rs.28,54,858/- for the work done by the second respondent. The second respondent made a request that he got some urgent commitments to be paid and hence, requested for extra amount. Thereafter, the petitioner paid a sum of Rs.34,68,887/- and settled the issue. On 10.06.2016, the second respondent came

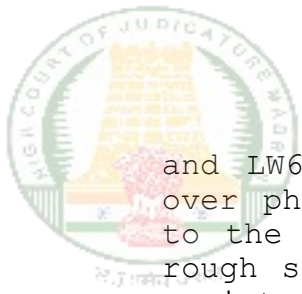


along with some rowdy elements and threatened the petitioner with dire consequence and took away Rs.1,00,000/-. Thereafter, he telephoned the accused, several time and demanded another Rs.8,00,000/-. Since the threat and pressure exerted by the second respondent became unbearable, on 23.09.2016 the petitioner lodged a complaint to the higher Police officials, who in turn, forwarded the same to C5-Kothavalchavadi Police Station, Chennai. On 07.10.2016, both the petitioner and the defacto complainant appeared before the C-5, Kothavalchavadi Police Station and both gave undertaking letter, that it is a civil dispute and they would approach the Civil Court. Suppressing all these facts, after two years, the second respondent created a false story, that when he called him to pay the balance amount over the cell phone on 25.05.2018, the petitioner abused him and committed the above offences. The petitioner filed an anticipatory bail in CrI.O.P.No.8772 of 2019 and this Court by order dated 03.04.2019 granted the same. Later, went to Lower Court to execute sureties, he was arrested and threatened. Further whenever, the petitioner lodged any complaint, it was not entertained. The second respondent somehow managed to get a Court's order under Section 156(3) of Cr.P.C., got registered the First Information Report. The second respondent suppressed the earlier complaint of the petitioner given to the C-5, Kothavachavadi Police Station and the undertaking given, hence got the present complaint initially.

6. In this case, LW2 to LW4 and LW6 are the witnesses said to be present with the de-facto complainant/LW1, when LW1 called the petitioner over the phone and he was threatened by the petitioner. LW5 is the relative of LW1, who introduced the petitioner to the second respondent, he has not stated anything other than information. LW7 and LW8 are the observation mahazar and rough sketch witnesses. The observation mahazar and rough sketch were prepared on 17.03.2019, i.e., after a year and alleged occurrence with considerable delay.

7. The petitioner and the defacto complainant are having civil dispute with regard to payments and the threat is an invented story to cover up the mistakes committed by the the second respondent. In this case, the alleged threat made through phone, no call details and calls records produced to confirm the same.

8. The learned Additional Public Prosecutor has submitted that on the complaint of the de-facto complainant, a case came to be registered on the directions of the District Munsif-cum-Judicial Magistrate, Thittakkudi, on 25.02.2019. Thereafter, FIR came to be registered on 16.03.2019. Nine witnesses were examined in this case. LW1 is the defacto complainant, who was threatened by the petitioner. LW2, LW3, LW4



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and LW6 are the available witnesses, when the threat was made over phone. LW5 is the relative of LW1, who had introduced LW1 to the petitioner. LW7 and LW8 are the observation mahazar and rough sketch witnesses and LW9 is the Investigating Officer. On registration of the First Information Report, the first respondent Police visited the scene of occurrence and prepared observation mahazar and rough sketch, enquired the witnesses in the scene of occurrence. All the witnesses had not disputed the relationship between the petitioner and the defacto complainant and they confirmed the threat issued by the petitioner. There is some dispute in payment, for which, the threat has been made. Almost five witnesses corroborate the statement of the defacto complainant. On completion of investigation, charge sheet filed. The Lower Court on perusal finding prima facie materials taken cognizance of the case, issued summons to the petitioner. The points raised by the petitioner has to be proved by the witnesses and not in a quash petition.

9. The defacto complainant submits that in this case, the relationship between the petitioner and the second respondent is not disputed. The petitioner himself admitted that he had engaged the defacto complainant for electrical contract work in 1) Femina Shopping Mall, Trichy, 2) Reliance Shopping Mall, Erode and 3) Star Private Hospital, Pudhukottai and the petitioner had executed the work to the tune of Rs.93,24,826.00/-. The defacto complainant was paid only Rs.41,11,430.00/- and substantial amount of Rs.52,13,396.00/- was not paid. When he questioned the same, the petitioner had given one reason or the other and delayed the payment. The defacto complainant was pressurized by the workers, who were engaged in the contract work, to pay their salary. Further, the petitioner wanted to cheat the defacto complainant for the work he has done, with his influence, he lodged false complaint. The defacto complainant was summoned by C-5, Kothavalchavadi Police Station and there he gave an undertaking that the issue would be resolved through Civil Court. Taking advantage of the same, the petitioner is avoiding payment. On the other hand, he had threatened and abused the defacto complainant, which was proved through witnesses LW2 to LW4 and LW6. Further, the petitioner while executing the sureties on 09.04.2019 had come up with three persons and threatened the defacto complainant, and hence, a case has been registered in Crime No.141 of 2019, which was later closed. Presently, when he come for the hearing date on 21.10.2020 in STC.No.157 of 2019 again the defacto complainant was abused and threatened, for which, a case in Crime No.36 of 2021 registered and the same is pending investigation. The influence of the petitioner is such that, the respondent Police, not acted the complaint of the second respondent. Hence, the second respondent each time, forced to approach the Judicial Magistrate under Section 156(3) of Cr.P.C and thereafter only,



the First Information Report got registered and the above case is one such incident. The points raised by the petitioner are on disputed facts, hence this quash petition to be dismissed.

10. Considering, the rival submissions and perused the materials, it is seen that the relationship between the petitioner and the defacto complainant is not disputed. The defacto complainant is an electrical contractor and he was assigned with electric contract work by the petitioner in 1) Femina Shopping Mall, Trichy 2) Reliance Shopping Mall, Erode and 3) Star Private Hospital, Pudhukottai, these works have been done between the years 2014 and 2016. There was some dispute with regard to the payments. Hence, the petitioner had earlier approached the C-5, Kothavalchavadi Police against the second respondent. Both the second respondent and the petitioner appeared before the C-5, Kothavalchavadi Police Station on 07.10.2016 and gave an undertaking that both will not cause any threat to each other and the dispute of payment would be resolved through the Civil Court.

11. This being the case, in the year 2018, the second respondent lodged a complaint that he was threatened by the petitioner on 25.05.2018, and hence, he sent a complaint by post which was not acted upon. Thereafter, he filed a petition under Section 156(3) Cr.P.C. on 25.05.2019 and the First Information Report in Crime No.20 of 2016 was registered on 16.03.2019. On conclusion of the investigation, charge sheet filed on 25.05.2018 and taken on file in STC.No.157 of 2019. From the charge sheet, it is seen that nine witnesses are listed, out of which, LW2 to LW4 and LW6 were present at that time of threat on 25.05.2018. LW6 confirms relationship between the petitioner and the defacto complainant. LW7 and LW8 are the observation mahazar and rough sketch witnesses which were prepared with a delay. In this case, the primary allegation is that the threat was made through Mobile Phone of the petitioner bearing contact Number 9840928199 to the second respondent, in his mobile number 7824967419. Admittedly, the call details and records not produced. Admittedly, in this case, the ownership of the mobile not verified. When the entire case rest on the threat made through mobile phone, non seizure of mobile phones collection of cell details etc., which is the foundational and fundamental aspect is not done. Thereafter, the other facts, in this case, no materials collected, consequently listed witnesses statements becomes doubtful. The case of the petitioner is fortified on the undertaking given by the defacto complainant during the earlier enquiry which is not disputed. C-5, Kothavalchavadi Police during the year 2016 had enquired both the petitioner and the defacto complainant both appeared and given undertaking to approach the Civil Court. Thus, looking the case at any angle, the threat made has not ensured into action. Hence, this Court



is of the view that an empty threat will not constitute any offence, which would not sustain the proceedings for the offence under Sections 506(i) and 294(b) IPC.

12. In view of the same, this Court is inclined to allow this Criminal Original Petition.

13. This Court places special appreciation to the Legal Aid Counsel Mr.Nandhakumar, who had thoroughly prepared and made effective factual and legal submissions on the case of the defacto complainant.

14. With the above directions, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar

True Copy//

Sub Assistant Registrar

dna

To

1. The Judicial Magistrate, Thittakkudi,
Cuddalore District.
2. The District Munsif-cum-Judicial Magistrate,
Thittakkudi.
3. The Sub-Inspector of Police
Avinankudi Police Station
Cuddalore District
4. The Public Prosecutor
High Court, Madras.

Crl.O.P.No.16799 of 2020
and
Crl.M.P.Nos.6485 6487 of 2020 &
7975 of 2021

AD[co]
NSK 29/10/2021