

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2021

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.21015 of 2019
and CrI.M.P.No.10843 of 2019

A.Suresh

... Petitioner

Vs.

1. The State Rep. By
The Inspector of Police,
Erode Town Police Station,
Erode District.

2. Kumar

... Respondents

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. calling for the records pertaining to CC.No.772 of 2019 on the file of the learned Judicial Magistrate -II, Erode and quash the same as illegal, incompetent and abuse of process by allowing the present criminal original petition.

For Petitioner : Mr.Guruprasad.M.

For Respondents : Mr.M.Mohamed Riyaz R1
Additional Public Prosecutor
Mr.A.Gokulakrishnan R2

ORDER

This petition has been filed seeking to quash the proceedings in CC.No.772 of 2019 on the file of the learned Judicial Magistrate -II, Erode.

2. The second respondent gave a complaint against the petitioner on 19.06.2019 to the effect that the petitioner barged into the lodge and demanded money from the second respondent on the ground that the petitioner is the Sub- Editor of the Magazine and if the money is not given, the petitioner will publish damaging articles about the lodge. It is further alleged in the complaint that the petitioner demanded a sum of Rs.40,000/- and went to the extent of threatening the second respondent. The FIR was registered on 19.06.2019. The statements of the witnesses was recorded under Section 161(3) of

Cr.P.C. on 19.06.2019 and 20.06.2019 and the final report was laid 20.06.2019. The Court below has taken cognizance of the complaint for offences under Section 500,387 and 506(ii) of IPC. Aggrieved by the same, the present petition has been filed before this Court.

3. Heard Mr.Guruprasad.M., learned counsel for the petitioner, Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing on behalf of the first respondent and Mr.A.Gokulakrishnan, learned counsel for the second respondent.

4. The main ground of attack in the present petition is that the facts alleged are inherently improbable and the fact that a final report came to be filed on the very next day after the FIR was registered, itself shows that the respondent Police have acted in haste with malafide intention.

5. The final report has been taken cognizance for the offences under Section 500, 387 and 506(ii) of IPC. Insofar as the offence under Section 500 of IPC is concerned, it falls under Chapter-XXI of the IPC. Section 199 of Cr.P.C. specifically provides that no Court shall take cognizance of an offence punishable under Chapter- XXI of the IPC, except upon a complaint made by the aggrieved person. In short, for offence under Section 500 of IPC, there must be a complaint as defined under Section 2(d) of Cr.P.C. and in the present case, the cognizance has been taken by virtue of a police report. Therefore, the Court below lacked jurisdiction to take cognizance for offence under Section 500 of IPC.

6. The second offence for which the Court below has taken cognizance is under Section 387 of IPC. In order to attract the offence under Section 387 of IPC, the petitioner should have actually caused or attempted to cause fear to the victim for the purpose of committing extortion and the fear in question must be of such gravity of causing death or grievous hurt to the victim. In the present case, except for some oral threat that is alleged in the complaint and in the 161 statements, there is absolutely no material to bring the facts of the present case under Section 387 of IPC.

7. The third offence for which the Court below has taken cognizance is under Section 506(ii) of IPC. For the purpose of establishing the charge of criminal intimidation, empty threats by itself cannot make out an offence unless there is some material to show that the threat is a real one. Useful reference can be made to the Judgment of the Hon'ble Supreme Court in Vikram Johar Vs. State of Uttar Pradesh and another reported in 2019 (3) MLJ Cr1.295.

8. In the present case, the complaint as well as the statements merely shows that the petitioner has made an oral threat that he will attack if the money is not given to the petitioner. This material is not enough to bring this case within the offence of criminal intimidation.

9. Apart from the above, the undue haste shown by the Police in registering the FIR on 19.06.2019 and filing a final report on the very next day on 20.06.2019 and coupled with the allegations made against the petitioner, apparently shows that the incident itself is inherently improbable. Within two days of the alleged incident, the respondent Police had recorded the statement of nearly nine witnesses out of which there are two observation mahazar witnesses and two seizure mahazar witnesses, who are rank third parties. It defies commonsense while noticing that in a case of this nature, the police took pains to complete the investigation in such a rapid pace. It is something very strange and strikes at the root of the very criminal proceedings initiated against the petitioner.

10. In view of the above discussions, the proceedings against the petitioner in CC.No.772 of 2019 on the file of the learned Judicial Magistrate -II, Erode, is hereby quashed and this Criminal Original Petition is allowed accordingly. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Inspector of Police,
Erode Town Police Station,
Erode District.

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

3.The Judicial Magistrate-II,
Erode.

+1cc to M/s.A.Gokulakrishnan, Advocate Sr.3168

+1cc to Mr.M.Guruprasad, Advocate Sr.3312

Crl.O.P.No.21015 of 2019
and Crl.M.P.No.10843 of 2019

sr II[co]
srg 10/03/2021



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