



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 16.09.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P. (MD)No.3548 of 2021

and

Crl. (MD)Nos.1973 & 1974 of 2021

WEB COPY

1.Kamaraj

2.Annathai

3.Ponpandi

... Petitioner/Accused Nos.1 to 3

Vs.

1.The State Rep throughout

The Inspector of Police,  
Meignanapuram Police Station,  
Thoothukudi District.  
In Crime No.201/2015

... 1<sup>st</sup> Respondent/Complainant

2.Selvakumar

... 2<sup>nd</sup> Respondent/Defacto  
Complainant

**Prayer:** Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to C.C.No.165 of 2016 on the file of the learned Judicial Magistrate, Sathankulam, Thoothukudi and quash the same.

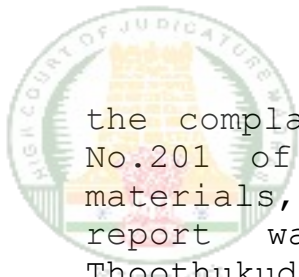
For Petitioners : Mr.D.S.Haroon Rasheed  
For R1 : Mr.K.Sanjai Gandhi,  
Government Advocate (Crl.Side).  
For R2 : Mr.P.Jeya Sankar

### ORDER

This petition is filed to quash the C.C.No.165 of 2016 on the file of the learned Judicial Magistrate, Sathankulam, Thoothukudi.

2. The case of the prosecution in brief:-

The defacto complainant, who is the second respondent herein is residing in the address of West Street, Thandupathu Village, Tiruchendur Taluk, Thoothukudi District and the house in the above said address, belongs to him and now, he is staying at Kerala and running a business there. After knowing the presence of the defacto complainant, on 06.09.2015, at about 04.00 p.m, the accused persons trespassed into his house and scolded in front of his house and also criminally intimidated him. So, on the basis of



the complaint given by the defacto complainant, a case in Crime No.201 of 2015 was filed on 06.09.2015. After collecting the materials, recorded the statement of the witnesses and final report was filed before the learned Judicial Magistrate, Thoothukudi, which was taken on file in C.C.No.165 of 2016 for the offences under Sections 448, 294(b) & 506 (ii) IPC.

3. Seeking quashment of the above said criminal case, this petition is filed mainly on the ground that the defacto complainant is the brother's son of the first petitioner. The second petitioner is the wife of the first petitioner and the third petitioner is the son of the petitioners 1 & 2. The first petitioner had two brothers. One is Lakshmanan and another one is Chandrasekar and Chandrasekar is the father of the defacto complainant herein. So, out of their joint earning through Aluminum Company at Kerala, they purchased a property in the home town of Thandupathu Village. There was a dispute, over the sharing of the property. So, nothing happened as mentioned in the final report and charge sheet. Even the statement recorded during the course of 161 (3) Cr.P.C, do not make out a *prima facie* case.

4. Heard both sides.

5. It is a case of trespass, abusing the person in filthy language and criminal intimidation. It is seen that the defacto complainant and the petitioners herein are close relatives. It is also further seen that to attend temple festival he came to home town one week prior to the date of occurrence from Kerala and stayed in the house. Knowing the same, these petitioners alleged to have trespassed into the house and caused criminal intimidation and abused him in filthy language. Whether the occurrence stated in the final report really took place or not cannot be a matter for discussion in this petition.

6. But, however, a legal ground has been made by the petitioner with regard to the offence under Section 294 (b) IPC. Even as per the case of the prosecution, the petitioner alleged to have trespassed into the house of the defacto complainant and abused him in filthy language. Since the abuse alleged to have taken place inside of the house of the defacto complainant, the offence under Section 294 (b) is not attracted. 294 (b) is defined as hereunder:-

"294 (b) - sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."

- So, the ingredients of the offence are not attracted against the petitioners.



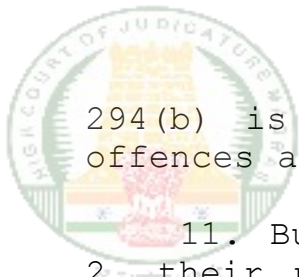
7. The next allegation, the offence under Section 448 IPC. The petitioner would say that the disputed house belongs to joint family. So, the question of trespass into that house did not arise. Even though, on the face of it, such an argument cannot be accepted. Whether the house in which, the defacto complainant was staying belongs to the joint family or not cannot be a matter for discussion in this petition. As it involves disputed facts. It is not admitted by the second respondent to the effect that the house in which, he was staying belongs to the joint family. So, this argument on the side of the petitioners, cannot be accepted.

8. Insofar as the offence under Section 506 (ii) IPC is concerned, there is a specific allegation to the effect that he was criminally intimidated. The learned counsel for the petitioners would submit that even as per the allegation made in the complaint as well as the final report it does not attract the penal provision of 506 (ii) IPC. 506 (ii) IPC is defined as hereunder:-

"506. Punishment for criminal intimidation.—Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; If threat be to cause death or grievous hurt, etc.—And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or 1 [imprisonment for life], or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both."

9. The learned counsel for the petitioner would submit that because of the threat, the defacto complainant might have experienced fear of death. But, here, no such averments or allegation. So, the offence under Section 506 (ii) IPC is not made out. This is also a matter for consideration during trial. Whether the second respondent experienced fear, when the petitioners alleged to have criminally intimidated him, will come to light only during the course of evidence.

10. I am of the considered view that except the offence under Section 294 (b), there is a *prima facie* ground to proceed against the petitioners. Insofar as the offences under Sections 448 & 506 (ii) IPC are concerned, ground is available. So, this petition is liable to be partly allowed and accordingly, charges under Section



294(b) is quashed against the petitioners. In respect of other offences are concerned, trial may proceed in accordance with law.

11. But, however, considering the age of the petitioners 1 & 2, their personal appearance is dispensed with before the Trial Court with the following conditions:-

They must appear before the Judicial Magistrate, Sathankulam, Thoothukudi, within 15 days from the date of receipt of a copy of this order and they shall file an undertaking affidavit that they will appear before the concerned Court as and when required by affixing attested photo. They must engage a lawyer to represent them. So, if such undertaking is given, the Trial Court may dispense the personal appearance of the petitioners 1 & 2. The third petitioner must appear before the Court regularly.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

**Note:** In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Judicial Magistrate, Sathankulam,  
Thoothukudi.

2.The Inspector of Police,  
Meignanapuram Police Station,  
Thoothukudi District.

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

**CrI.O.P. (MD)No.3548 of 2021**  
**16.09.2021**

NSN(CO)

SB(05.10.2021) 4P 4C

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