



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 09.07.2021

Delivered on: 27.07.2021

CORAM

THE HONOURABLE **MR. JUSTICE G. ILANGO VAN**

CrI.O.P. (MD)No.8396 of 2021

and

CrI.M.P. (MD)No.4314 of 2021

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1.S.Dinakaran

2.D.MohanBabu

... Petitioners

Vs.

1.State Rep.by

The Inspector of Police,
Parthibanoor Police Station,
Ramnad District.

2.Jacob

Grade II Police (1147)
Parthibanoor Police Station,
Ramnad District.
(Crime No.253 of 2020)

... Respondents

Prayer : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the proceedings in Crime No.253 of 2020 on the file of the first respondent police and quash the same against these petitioners.

For Petitioner : Mr.C.Jeganathan

For R1 : Mr.R.M.Anbunithi,
Additional Public Prosecutor

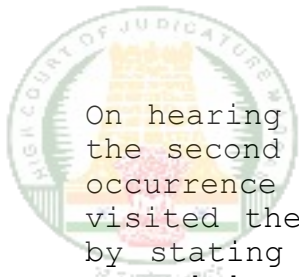
ORDER

This criminal original petition has been filed to quash the proceedings in Crime No.253 of 2020 on the file of the first respondent police

2.The case of the prosecution is that on 15.06.2020 at about 6.30 pm., Police party were involved in the regular duty of checking vehicles. At that time, the accused namely S.Dinakaran, Mohanbabu and Deepak came by two wheeler in rash and negligent manner. The Police party asked them to stop the vehicle. But the accused person abused them in filthy language and also threatened them with dire consequences. They also criminally intimidated the Police party. Hence, on the basis of the complaint given by the Police Constable J.Jacob, a case was registered in Crime No.253 of 2020 for the offence under Sections 294(b), 353, 506(2), 188 and 269 IPC r/w Section 3 of Epidemic Act, 1897, Section 134 of the Public Health Act and Section 51(b) of the Disaster Management Act, 2005. Pending investigation, this petition came to be filed by the petitioners/accused seeking quashment of FIR.

3.Heard both sides.

4.The learned counsel for the petitioners submitted that a complaint has been given by the second petitioner stating that in the place of occurrence Police party abused them in filthy language and pulled their shirt and also assaulted. They also snatched Rs.2,500/- and phone.



On hearing of this incident, the first petitioner, who is the father of the second petitioner, came to the Police Station and informed about the occurrence and on 16.06.2020 at about 10.00 am., when the petitioners visited the Police Station, the Sub Inspector of Police threatened them by stating that case has been registered against them and they will be remanded.

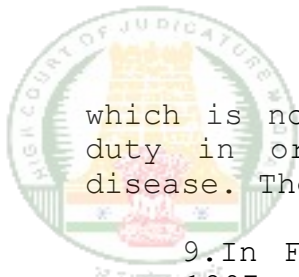
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5.This complaint is dated 16.06.2020 at about 05.40 pm. As per FIR, occurrence said to have been taken place on 15.06.2020 at about 6.30 pm., so only after registering of FIR, this complaint has been given. The contention on the part of the petitioners that none of the allegations mentioned in FIR attributed any of the offence against the petitioners. The learned counsel for the petitioners further submitted that offence under Section 188 IPC is a non-cognizable offence and Police has no power to register case and investigate the same and this position is well settled in a judgment of this Court reported in **2018 2 LW (Crl) 606 [Jeevanandham and others vs. The Inspector of Police Velayuthampalayam Police Station, Karur District] dated 20.09.2018.**

6.It is seen that when the occurrence took place, COVID-19 lock-down was in force. So the Police party were involved in routine duty and it appears that the petitioners were roaming around without any purpose or reason and hence, the Police stopped and enquired them. Now, it is seen that there is specific allegation to the effect that the petitioners abused the Police party in filthy language and also criminally intimidated them. Even though on the basis of allegation mentioned in FIR under Section 506(2) IPC is not attracted. Still Section 294(b) IPC is available.

7.The petitioners would rely upon the judgment of this Court for the purpose of arguments that to attract offence under Section 506(2) IPC, the ingredients of Section 506 IPC must be made out. He would rely upon judgment in a case of **S.Selva Kumar Vs. State** made in **Crl.O.P. (MD) No.18665 of 2014**. No doubt that it has been repeatedly held by this Court and other Courts that for attracting Section 506(2) IPC, there must be real threat and mere utterances of words are not sufficient. More over, the Police party may not get fear on the mere utterances of words by the accused persons. So it is highly doubtful that because of criminal intimidation made by these petitioners, the Police party fear stricken. Hence, the offence under Section 506(2), even as per FIR, cannot be attracted.

8.As mentioned earlier, offence under Section 294(b) IPC is attracted because, the occurrence took place in a public road. So whether the occurrence as spoken by the defacto complainant namely the second respondent, really took place or not, can be found only during the course of investigation. Similarly, the offence under Section 353 IPC also mentioned. There is specific allegation to the effect that criminal intimidation was made with a view to prevent the Police party from performing their official duty. So the contention that the ingredients of offence on the basis of the allegations in FIR is not attracted, cannot be accepted. The allegations that the petitioners threatened the Police party and prevented them from performing their official duty, can be found out only during the course of investigation and trial. More over, the occurrence was said to have been taken place during pandemic period,



which is not appreciable. After all, the Police party were doing their duty in order to safeguard the people from the spread of pandemic disease. They have to perform their duty without any fear.

9.In FIR, the offence under Section 269 IPC r/w 3 of the Epidemic Act, 1897, Section 134 of the Public Health Act and Section 51(b) of the Disaster Management Act, 2005 also mentioned. From the fact and circumstances, it is seen that the petitioners were not indulged in the crime with an intention to spread the pandemic disease. There is no allegation that the petitioners were affected by the COVID-19 during the occurrence. Hence, the offence under Section 269 IPC r/w 3 of the Epidemic Act, 1897, Section 134 of the Public Health Act and Section 51 (b) of the Disaster Management Act, 2005 are also not attracted and this offences are liable to be quashed.

10.The contention that the first petitioner is an Ex-Vice Chairman of Paramakudi and he was affiliated with the opposite party i.e., DMK, and hence, the complaint was preferred with political motive, is not taken into account at this stage. The points which are available to the petitioners can be taken only during the course of trial.

11.The investigation shall continue with regard to the offences under Sections 294(b) and 353 IPC to its logical end. The First Information Report is quashed with regard to the offence under Sections 506(2), 188, 269 IPC r/w Section 3 of Epidemic Act, 1897, Section 134 of the Public Health Act and Section 51(b) of the Disaster Management Act, 2005 are quashed. Accordingly, this criminal original petition is partly allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

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Sub Assistant Registrar(CS)

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 Inspector of Police,
Parthibanoor Police Station,
Ramnad District.

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

CrI.O.P. (MD)No.8396 of 2021
27.07.2021

KMV

<https://hservices.mca.gov.in/hservices> RS (09.08.2021) 3P-3C