



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 18.06.2021

DATE ON WHICH PRONOUNCED : 25.06.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.13408 of 2020

and

Crl.MP(MD)Nos.6162 & 6163 of 2020

Duraipathi Bala Subash @ Duraipathi Bala Subash (Kutti)

(Wrongly mentioned as Duraipathi Bala Subash (Kutti) instead of Duraipathi Bala Subash in the final report)

... Petitioner/Accused No.2

Vs.

1.The State Represented by

The Inspector of Police

Seithur Rural Police Station,

Seithur, Virudhunagar District.

(Crime No.166 of 2018)

... 1st Respondent/Complainant

2.Muthusamy

... 2nd Respondent/Defacto
Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the entire records pertaining to the charge-sheet filed in C.C.No.222 of 2019 on the file of the learned Judicial Magistrate Court, Rajapalayam and quash the same as illegal in so far as the petitioner is concerned.

For Petitioner : Mr.R.Karunanidhi

For R1 : Mr.R.M.Anbu Nithi,

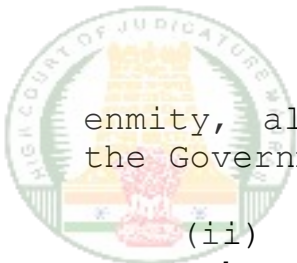
Additional Public Prosecutor.

ORDER

This Criminal Original Petition is filed to quash the charge-sheet filed in C.C.No.222 of 2019 on the file of the learned Judicial Magistrate Court, Rajapalayam.

2. The case of the prosecution :-

(i) On 09.10.2012, at about 09.00 p.m, when the temple festival of 'Maryamman Kovil' was conducted in Sundarajapuram Village. The temple chariot was taken through the street and when it reached the Government Higher Secondary School, due to previous



enmity, all the accused persons threw stones by standing inside the Government School.

(ii) On the basis of the complaint given by the second respondent, a case was registered in Crime No.166 of 2018 for the offences under Sections 294 (b) and 506 (ii) IPC. Based upon which, investigation was undertaken and statement of witnesses were recorded. Finally, charge sheet was filed before the learned Judicial Magistrate Court, Rajapalayam, which was taken on file in C.C.No.222 of 2019, making allegations that the petitioner along with the other persons, abused the defacto complainant in filthy language and also indulged in stone throwing.

3. Seeking quashment of the charge sheet, the petitioner, who is the second accused before the Trial Court has filed this petition, mainly on the ground that there was a delay of three days in lodging the complaint and due to the previous enmity that existed between the petitioner's father by name, Mr.Duraibalan and the villagers over encroachment issue. The second ground is that none of the allegation mentioned in final report attract any of the ingredients of the offences alleged against this petitioner.

4. Here both sides.

5. It appears that the petitioner is studying third year B.A History in the Rajus' College, Rajapalayam. According to the petitioner, the petitioner attended the College on the date of alleged occurrence took place, i.e., on 09.10.2018.

6. Reading of the First Information Report shows that on noticing stones throwing, the defacto complainant and the villagers, went inside the School Campus and found the petitioner and others. When their activities were questioned, the accused abused them. But, it appears that the temple festival was conducted, in pursuance of the order of this Court, in WP(MD) No.20511 of 2018, dated 27.09.2018. So, probably police would have been available during the incident. But, it is not clear on record whether the police was informed about the same on the day itself and during the course of investigation, no materials have been collected with regarding to the delay in lodging the First Information Report. The witnesses, who have been examined during the course of investigation, have stated that regarding the incident, they consulted the villagers and later only, lodged the complaint. Even though, the delay cannot be taken as a ground for quashing the charge sheet, as mentioned earlier, the police people would have been available in the place of occurrence. So, failure on the part of the village people to inform the police immediately about the occurrence. As mentioned earlier, no materials are collected by the Investigation Officer.



7. As mentioned earlier, reading of the complaint as well as the statement recorded during the course of investigation, does not reveal any thing about this important ingredients. In the absence of any important ingredients, the offence under Section 294 (b) will not attract and so, the petitioner cannot be proceed against this offence.

8. The next allegation is that 506 (i) IPC. For this also a mere statement as mentioned to the effect that they criminally intimidated the villagers by showing aruval. It appears that during the investigation, the aruval said to have used, during the course of occurrence has not been recovered. So, it appears that it is a verbal allegation for attracting the offence under Section 506 (ii) IPC. The petitioner would rely upon the judgment of this Court in **G.Paramasivam and Another Vs. Deputy Superintendent of Police (L&O)** in **Crl.OP(MD)No.1748 of 2018**. Where it has been stated that making mere verbal out burst would not attract the provision. There is no statement to the effect that because of the criminal intimidation, they entertained fear. Moreover, it appears that the petitioner and the other persons are college going students. It is highly unbelievable that they were capable of threatening the villagers, when the temple festival was going on with aruaval. Exaggerated version have been made by the defacto complainant and as well as the village people.

9. None of the witnesses examined in the course of investigation stated that they annoyed over the abuse of filthy language. So, the petitioner would rely upon the judgment of this Court in **Selvakumar Vs State and another** in **Crl.OPNo.18658 of 2014**, wherein, the offence under Section 294(b) and 506 (i) was involved. In that case, no particulars with regard to the offence under Section 294 (b) has been stated in the complaint. It is stated that the accused used filthy language. Beyond that, no other particulars were mentioned. Here, except stating that the petitioner along with the other persons used filthy language, no other particulars are mentioned as stated above.

10. So, I am of the considered view that since the ingredients of the offences have not been brought on record during the course of investigation, no purpose is going to be served by proceeding the prosecution against this petitioner.

11. Moreover, it is also seen that the father of the petitioner has filed WP(MD)No.13745 of 2018 against some of the village people. So, even though, this cannot be taken into account, considering the totality of the circumstance, I am of the considered view that no true case has been projected by the



prosecution and the averments of the allegation mentioned in the First Information Report also are not sufficient enough to proceed against the petitioner. So, on that ground, this petition is liable to be allowed.

12. In the result, the Criminal Original Petition is allowed. The proceedings in C.C.No.222 of 2019, on the file of the learned Judicial Magistrate Court, Rajapalayam, is quashed insofar as the petitioner is concerned. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// 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,
Rajapalayam.
2. The Inspector of Police
Seithur Rural Police Station,
Seithur, Virudhunagar District.

Copy to

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

Crl.O.P. (MD)No.13408 of 2020

and

Crl.MP(MD)Nos.6162 & 6163 of 2020

25.06.2021

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