



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.11.2021

CORAM :

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)No.17591 of 2021
and
Crl.M.P. (MD)No.9582 of 2021

P.Mahendran

... Petitioner

Vs.

1.The State, represented by its,
The Inspector of Police,
Nalattinpudur Police Station,
Thoothukudi District.
(Crime No.366 of 2021)

2.G.Ramamoorthy

... Respondents

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the entire records in relating to the impugned FIR in Crime No.366 of 2021 on the file of the respondent and to quash the same as unsustainable.

For Petitioner : Mr.C.M.Mari Chelliah Prabhu
For Respondents : Mr.T.Senthil Kumar,
Addl. Public Prosecutor for R1

O R D E R

Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the first respondent.

2.The petitioner is figuring as an accused in Crime No.366 of 2021 registered on the file of the first respondent for the offences under Sections 294(b) and 323 of IPC. The learned counsel appearing for the petitioner submitted that the impugned order has to be quashed for two reasons. Firstly, the statement of the second respondent was recorded and registered as a case by one R.John, Grade-I police constable. Since Section 294(b) of IPC is a cognizable offence, as per Section 154(1) r/w. Section 2(o) of CrPC, the case has to be registered only by an officer above the rank of the constable. Since the registration of the impugned FIR is not by an officer as defined in Section 2(o) of CrPC, the FIR has to be quashed. Secondly, Section 294(b) of IPC will be attracted only if the offence is committed in or near a public place. In the case on



hand, this vital ingredient is not satisfied.

3.As rightly submitted by the learned Additional Public Prosecutor appearing for the first respondent, Section 154(1) of CrPC will be applicable only if the information was lodged orally by the defacto complainant in the police station itself. In the case on hand, the defacto complainant was admitted in hospital and on receiving intimation from Kovilpatti Government Hospital, the police constable on duty went to the Government Hospital and recorded the statement of the defacto complainant and after returning to the station, registered the case. Therefore, I am not in a position to accept the contentions advanced by the learned counsel for the petitioner.

4.A reading of the FIR would indicate that due to a pathway dispute between the petitioner and the defacto complainant, the occurrence in question has taken place. One can come to the safe conclusion that the petitioner herein was standing in his house while the defacto complainant was standing in the public street. Thus, the occurrence had taken place in/near a public street. The ingredient set out in Section 294(b) of IPC is satisfied. Both the contentions of the learned counsel for the petitioner lack merit. Therefore, this impugned FIR cannot be quashed on the aforesaid grounds. This criminal original petition is dismissed. At this stage, the learned counsel for the petitioner brings it my notice that on the same day, the petitioner also lodged a complaint against the defacto complainant. But only CSR was issued. A copy of the CSR has been closed at Page No.7 of the typed set of papers. I called upon the first respondent to produce a copy of the complaint, as it has not been enclosed by the petitioner. In the said complaint, the petitioner alleged that the defacto complainant hurled stones at him and also criminally intimidated him by holding out dire threats. Thus, on the face of it, cognizable offence is made out. When a cognizable offence is made out, the first respondent ought to have registered a case based on the information given by the petitioner. He is accordingly directed to register a case on the basis of the petitioner's complaint dated 15.09.2021.

5.With this direction to the first respondent, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



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,
Nalattinpudur Police Station,
Thoothukudi District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Copy to
The Judicial Magistrate No.i, Kovilpatti.

+1 CC to M/s.C.M. MARI CHELLIAH PRABHU, Advocate (SR-34417[F] dated 15/11/2021)

Crl.O.P(MD)No.17591 of 2021
12.11.2021

AM(CO)
TR(30.11.2021) 3P 5C