



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.12.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)No.19417 of 2021

and

Crl.M.P. (MD)Nos.10851 & 10852 of 2021

1.Raju

2.Kiruba

... Petitioners / Accused Nos.1 & 2

Vs

1.The State :-

Rep. by the Sub Inspector of Police,
Anjugramam Police Station,
Kanyakumari District.
Crime No.95 of 2019.

...1st Respondent/Complainant

2.Rajeswari

...2nd Respondent/Defacto Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records in C.C.No.134 of 2020 on the file of the learned Additional Mahila Court, Nagercoil, Kanyakumari District and quash the same.

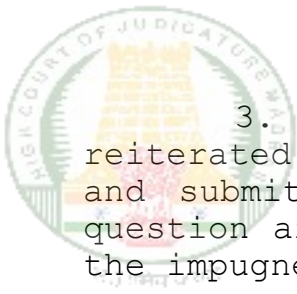
For Petitioners : Mr.R.Russel Raj

For R1 : Mr.T.Senthil Kumar
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the impugned proceedings in C.C.No.134 of 2020 on the file of the Additional Mahila Court, Nagercoil, Kanyakumari District.

2. The second respondent herein is the defacto complainant. Based on the information lodged by the second respondent, Crime No.95 of 2019 was registered on the file of the Anjugramam Police Station. Investigation was conducted and final report was filed. Cognizance of the offences under Sections 294(b), 427 and 506(i) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 was taken. The case was taken on file as C.C.No.134 of 2020. To quash the same, this Criminal Original Petition has been filed.



3. The learned counsel appearing for the petitioners reiterated all the contentions set out in the memorandum of grounds and submitted that the essential ingredients of the offences in question are absolutely absent. He called upon this Court to quash the impugned proceedings as an abuse of legal process.

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4. Per contra, the learned Additional Public Prosecutor appearing for the first respondent submitted that a case for quashing has not been made out. The learned counsel on either side are not quite sure if the charges have been framed or not. According to the prosecution, the defacto complainant owns 110 cents of land adjacent to the petitioner's land. The petitioners are said to have destroyed the fence put up by the defacto complainant. Hence, the defacto complainant lodged a complaint before the police. It is stated that the petitioners agreed to undo the mischief that they had earlier committed. However on 01.04.2019, the petitioners abused the defacto complainant in filthy language and told her that they would not re-install or erect the fence put up by the defacto complainant. They are also said to have criminally intimidated the defacto complainant. Hence, Crime No.95 of 2019 was registered. After investigation, final report was filed for the aforesaid offences.

5. Section 294(b) of IPC is as follows:-

"Obscene acts and songs.-- Whoever, to the annoyance of others, (a) -----

(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."

Section 4 of Tamil Nadu Prohibition of Harassment of Women Act is as follows:-

"Penalty for harassment of woman: Whoever commits or participates in or abets harassment of woman in or within the precincts of any educational institution, temple or other place of worship, bus stop, road, railway station, cinema theatre, park, beach, place of festival, public service vehicle or vessel or any other place shall be punished with imprisonment for a term which may extend to three years and with fine which shall not be less than ten thousand rupees."

6. A careful reading of the aforesaid provisions would clearly show that the offending act must have taken place in a public place. But admittedly, the occurrence did not take place in the private land of the parties. Since nothing took place in a public place, offences under Section 294(b) of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act are not attracted.

7. It is the case of the prosecution that the petitioners criminally intimidated the defacto complainant. The offence under



Section 506(i) of IPC will be attracted, only if a real threat had been held out. In the heat of the moment, some harsh words could have been uttered. The words uttered in such a context will not constitute the offence of criminal intimidation.

8. The learned counsel appearing for the petitioners relied on the decision made in Crl.O.P.(MD)No.17028 of 2004 dated 22.08.2008 and the order dated 20.09.2018 in Crl.R.C.(MD)No.811 of 2018 in this regard.

9. However, I am not in a position to concur with the contention of the petitioner's counsel that the offence under Section 427 of IPC is also not attracted. There are *prima facie* materials to show that the fence put up by the defacto complainant was uprooted by the petitioners. The prosecution has produced the photographs indicating mischief said to have been committed by the petitioners. The petitioner's counsel would of-course contend that the alleged act of mischief relate to certain subsequent events and not to the case on hand. These are pure questions of fact. While exercising jurisdiction under Section 482 of Cr.P.C, the factual veracity of the prosecution case cannot be tested beyond a point. Therefore, the petitioners will have to necessarily face the prosecution for the charge under Section 427 of IPC.

10. With the aforesaid observations and with the direction to the court below to re-frame the charges, this criminal original petition is partly allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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/ /2022

Sub Assistant Registrar(CS)

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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 Additional Mahila Court, Nagercoil, Kanyakumari District .

2.The Sub Inspector of Police,
Anjugramam Police Station,
Kanyakumari District.

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

ORDER MADE IN
CrI.O.P (MD) No.19417 of 2021
08.12.2021

PKP/11.05.2022/4P/4C