



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 27.01.2021

DATE ON WHICH PRONOUNCED : 22.02.2021

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CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.13259 of 2017

and

Crl.MP(MD)Nos.8979 & 8980 of 2017

1.Muthiaha Pasumpon

2.Ramani

3.Azhagarsamy

4.Gnanasekar

... Petitioners/Accused Nos.2, 3,4 & 7

Vs.

1.State rep through the

Inspector of Police,

C-4, Thilagar Thidal Police Station (L& O)

Madurai City,

Madurai.

Crime No.1240 of 2014

... 1st Respondent/Complainant

2.Pandi

... 2nd Respondent/Defacto Complainant

Prayer:Criminal Original Petition filed under Section 482 Cr.P.C., to call for the entire records of the charge sheet laid in C.C.No.306 of 2015 on the file of the learned Judicial Magistrate Court No.II, Madurai and quash the same as illegal.

For Petitioners : Mr.R.Karunanidhi

For R1 : Mr.M.Ganesan

Government Advocate (Crl.Side)

For R2 : Died (Memo filed in USR.5068 dated 21.12.2020)

ORDER

This Criminal Original Petition has been to quash the proceedings in C.C.No.306 of 2015 on the file of the learned Judicial Magistrate Court No.II, Madurai.

The brief facts of the case is as follows:-

The petitioners along with some other persons are facing charges under Section 147, 294 (b), 427 and 506 (ii) of IPC before the Judicial Magistrate, No.II, Madurai.



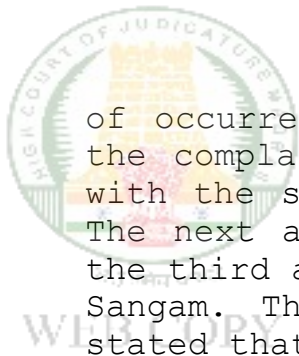
2.The defacto complainant in this case, lodged a complaint on 01.10.2014, alleging that during the relevant time, he was working as a Security in Tamil Sangam, Madurai. On 01.10.2014, at about, 11.00 a.m, when he was on duty, the named accused persons along with some unknown 10 persons threatened him to open the gate of the Tamil Sangam and threatened him. The accused namely Ramani, Azhagarsamy, Senthil and Arumugam, instigated the other unknown persons to kill him and also abused him in filthy language. The accused Gnanasekar by abusing the defacto complainant pushed him and he sustained simple injury. They also caused damage to the name board of the Tamil Sangam. The occurrence took place, at the instigation of Gurusamy, Muthiah and Pasumpon. Seeking action against those persons, the defacto complainant lodged a complaint, which was registered in Crime No.1240 of 2014 for the offences under Sections 147, 294 (b), 427 and 506 (ii) of IPC on 01.10.2014. Based upon the complaint, the Thilagar Thidal Police-C4, conducted the investigation and recorded the submission of witnesses and finally, they filed a final report before the learned Judicial Magistrate Court No.II, Madurai, and the same was taken cognizance in C.C.No.306 of 2015, on 20.10.2015. So, against that, this quash petition has been filed, on the ground that none of the ingredients of the offence alleged against the petitioners are satisfied and so, the charge sheet is liable to be quashed.

3.Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl.Side) appearing for the State.

4.The defacto complainant namely, the second respondent herein is reported to be dead and no steps were filed.

5.As mentioned earlier, the case of the prosecution is that the petitioners were arrayed as accused Nos.2, 3, 4 and 7 before the Trial Court. In the final report, it has been stated that these petitioners along with other co-accused committed the offence as set out in the final report. As stated earlier, the defacto complainant was working as security during the relevant point of time, in Tamil Sangam, Madurai. So, perusal of records filed along with this petition shows that some dispute over the Management of the College namely Senthamil Arts and Oriental College, Madurai arose between the first accused namely, Gurusamy and one Kumaran Sethupathi, who is stated to be the president of the Tamil Sangam, Madurai, where the alleged occurrence took place. During investigation, the Investigation Officer, recorded the statement of two witnesses, who were eye witnesses to the occurrence.

6.According to the petitioner, none of the offence alleged against the petitioners are attracted since no ingredients have been made out. The first offence alleged against the petitioner is that they constituted unlawful assemble at about 11.00 a.m, in the place



of occurrence on 01.10.2014. The defacto complainant has stated in the complaint that on the date and the time, the petitioners along with the some other persons scolded him near the gate to open it.. The next allegation is that they abused him in filthy language and the third allegation is that they damaged the name board of the Tamil Sangam. They also instigated the others to kill him. It is also stated that they caused damage to the name board of the Tamil Sangam. Regarding this, no materials has been collected by the Investigation Agency. Even in the observation mahazar, nothing has been stated and the alleged damaged board was also not recovered by the Investigation Officer.

7. According to the petitioners offence under Section 506 (ii) is not attracted since no materials are available to file final report. He relies upon the judgment of this Court in **Crl.OP(MD)No.9083 of 2017 and Crl.OP(MD)No.8686 of 2017 S.Ramesh Vs State of Tamilnadu and others** dated 21.08.2018. It has been observed by this Court that to constitute an offence under Section 506 (ii) IPC, *a mere threat is not enough and there must be an act in pursuance to the said threat, without which an offence of criminal intimidation is not attracted.* So, the point for consideration is ***whether the allegation mentioned in the complaint as well as the statement of the witnesses attract the ingredients of 506 (ii) IPC.*** As mentioned earlier, overt act is that the petitioners and others threatened the defacto complainant to open the gate and instigated the other persons to kill him. But, because of these utterance, it is not the allegation of the defacto complainant that he suffered criminal intimidation. So, reading of the final report as well as the statement of the witnesses and the defacto complainant, it is seen that there was only the mere oral threat and it was not real one and also it is seen that it was only an outburst of words expressed by the petitioners. So, the offence under Section 506 (ii) of IPC cannot be said to be attracted.

8. To attract offence under Section 294 (b), the allegation is that they called him as dog and son of bitch. Moreover, it should have been taken place in a public place. There is no allegation in the final report that the petitioners abused the defacto complainant in a public place. So, in the absence of any such ingredients the offences under Sections 294 (b), 427 and 506 (ii) would not be attracted. From the records, I am of the considered view that this prosecution have been lodged due to some dispute over the administration of the college as mentioned earlier. It is also seen that some sort of commotion took place in the gate area because of the previous enmity over the administration of the college. This shows that commotion took place in the gate area has been blown out of proportion to launch this criminal complaint. So, I am of the considered view that continuation of the prosecution will amount to abuse of the process of law. So, charge sheet is liable to be quashed.



9. Accordingly, the proceedings in C.C.No.306 of 2015 on the file of the learned Judicial Magistrate Court No.II, Madurai, is quashed and the Criminal Original petition is allowed. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar(Records)

// True Copy //

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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 Judicial Magistrate Court No.II,
Madurai.

2. Do through The Chief Judicial Magistrate, Madurai.

3.The Inspector of Police,
C-4, Thilagar Thidal Police Station (L& O)
Madurai City,
Madurai.

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

Crl.O.P. (MD)No.13259 of 2017
and

Crl.MP (MD)Nos.8979 & 8980 of 2017
22.02.2021

NSM(CO)
TR(09.03.2021) 4P 5C