



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2021

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE DR.G.JAYACHANDRAN

Crl.O.P(MD)No.13481 of 2017

and

Crl.M.P(MD)Nos.9082 & 9083 of 2017

T.Nagaraj ... Petitioner/Sole Accused

-vs-

1.State through
Inspector of Police,
South Police Station,
Tuticorin,
(Crime No.142/2017)

2.R.Jeyapal ... Respondent/
De-facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records in C.C.No.155 of 2017, on the file of the Judicial Magistrate No.I, Tuticorin and quash the same.

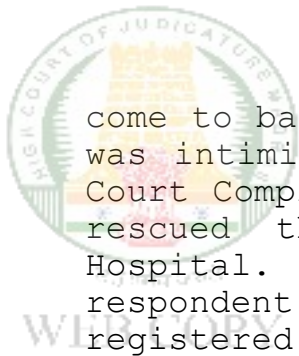
For Petitioner: Mr.KA.Raamakrishnan
For R1 : Mr.A.Thiruvadikumar
For R2 : Mr.Srinivasa Raghavan

O R D E R

This Criminal Original Petition has been filed by the sole accused in C.C.No.155 of 2017, on the file of the learned Judicial Magistrate No.I, Tuticorin to quash the final report made against him for the offences under Sections 294(b) and 506(i) of IPC., since the complaint is not maintainable.

2. The brief facts of the case as found in this quash petition:-

The petitioner herein T.Nagaraj is a practicing Advocate and member of the Bar Association, Tuticorin. The second respondent R.Jeyapal, aged about 72 years, is also an Advocate and member of the Bar Association, Tuticorin. On 22.02.2017 at about 10.10 a.m., the second respondent/defacto complainant and his son Aldrin Marshal went to the Bar Association building and abused the petitioner in filthy language and questioning him how the absconding accused can



come to bar and started attacking the petitioner with iron rod. He was intimidated by them that he will face death if he come to the Court Complex. The advocates, who were in the Bar Association room, rescued the petitioner and sent him to Tuticorin Government Hospital. On intimation from the Government Hospital, the first respondent police received the complaint from the petitioner and registered a case against Jeyapaul, his son Aldrin Earmarshall and Subbu Muthuramalingam for the offences under Sections 341, 294(b), 323 and 506(ii) IPC.

3. About the same occurrence, the said Jeyapaul, the second respondent herein, has forwarded the complaint to the Principal District Judge, Tuticorin stating that when he and his son were entering into the Court Complex, Nagaraj (petitioner herein), was sitting on a table in the Bar Association office room and was writing, seeing him Jeyapaul reported to the other members of the Bar and asked how the accused in an attempt to murder case can come to Bar Association. Hearing this, Nagaraj bounced on him saying he came to Bar Association only to murder him and used abusing language against him, which has caused shame and mental torture. Therefore, Jeyapaul had sought protection to carry on his profession.

4. This complaint was received by the Principal District Judge, Tuticorin and has forwarded to the police at 2.45 p.m. The final report filed in this complaint is now sought to be quashed in this petition.

5. While the complaint of Nagaraj received in the hospital premises was registered as Cr.No.141 of 2017, the subsequent complaint of Jeyapal forwarded through the Principal District Judge, Tuticorin, was registered in Cr.No.142 of 2017 for offence under Sections 506(i) and 294(b) IPC. From the complaint of the said Nagaraj, which is the basis for registration of Cr.No.141 of 2017 it is stated that there is previous enmity between the said Jeyapal and Nagaraj regarding the boycotting of Courts and on 30.11.2016 his complaint was registered against the petitioner herein in Cr.No.141 of 2016 alleging an attempt to murder of Jeyapaul and in that case, Nagaraj applied for anticipatory bail and the petition is pending. While so, his visit to Bar Association, Tuticorin on 22.02.2017 has triggered the fight between Nagaraj-the petitioner herein and the Jeyapal the second respondent.

6. The respondent police having taken up both the complaint for investigation had filed final report against the petitioner herein in C.C.No.155 of 2017 and as against the second respondent and two others in Cr.No.154 of 2017.

7. In view of the transfer petition filed by the second respondent herein, the case is now transferred to the learned Judicial Magistrate, Aruppukottai from the learned Judicial Magistrate, Tuticorin, vide a common order passed by this Court



in Crl.O.P(MD)No.203 and 769 of 2018 dated 22.02.2019.

8. In the present petition to quash the proceedings against the petitioner, who is the sole respondent in Cr.No.142 of 2017 taken on file in C.C.No.154 of 2017 by the learned Judicial Magistrate No.I, Tuticorin and transferred and renumbered as C.C.No.122 of 2019 on the file of the learned Judicial Magistrate, Aruppukottai, would submit that the statement of witnesses, specifically admit that the alleged occurrence has taken place inside the Bar Association building and therefore, it will not fall within the meaning of definition of public place to attract offence under Section 294(b) IPC. Further, it is contended that the ingredients for the offence under Section 506(i) IPC also not made out either in the complaint or in the 161(3) Statement of the witnesses. The investigating officer has not followed the Police Standing Order related to the case and case in counter.

9. The complaint of the second respondent lodged belatedly is only to counterblast the complaint of the petitioner, who sustained injury and got admitted in the hospital. As per the judgment of this Court rendered in Crl.O.P.No.5606 of 2020 dated 26.08.2020 when there is a case and case in counter, the investigating officer should conduct the investigation impartially and one case, which is true to be concluded with filing of final report and other false case has to be dropped, as mistake of fact, whereas, the respondent police has filed two final reports.

10. Relying upon the said judgment, the learned counsel for the petitioner would submit that there cannot be two final reports for the same incident.

11. This Court totally disagree with the above proposition of law canvassed by the learned counsel for the petitioner and reason will be stated later.

12. As far as Section 294(b) IPC is concerned, the learned counsel for the petitioner took all pain to strain is nerves to impress upon this Court that three necessary ingredients to attract Section 294(b) IPC lacks in the present case and therefore, the final report is liable to be quashed. According to the counsel, the three ingredients for 294(b) IPC are (1) the alleged occurrence must be in a public place. (ii) the word uttered must be obscene in the presence of others; (iii) Such occurrence must cause annoyance to others who are present.

13. Referring the dictionary meaning of the preposition "of" and the word "public place", the learned counsel for the petitioner would submit that the Bar Association Room is not a public place. The complaint alleging annoyance to others must be by general public and not by individual, the expression annoyance ought to have been



to have been present at the time of occurrence.

14. The learned counsel for the petitioner would state that neither in the complaint nor in 161(3) Statement of the witnesses specifically mentioned, the word uttered by the petitioner caused annoyance. Therefore, in the absence of ingredients to attract Section 294(b) IPC, the final report is unsustainable. For the better appreciation of the submission made by the learned counsel for the petitioner, Section 294(b) IPC is extracted below:-

294: whoever, to the annoyance of others:-

(a) Does any obscene act in any public place

(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".

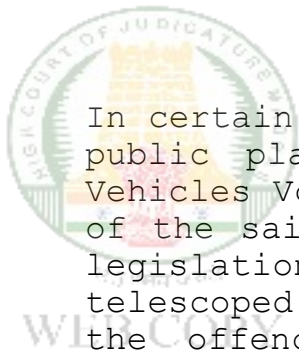
15. The place of occurrence, according to the prosecution, as found in the rough sketch enclosed along with the final report indicates that it is the Bar Association room is abutting the common passage.

16. The complaint of the second respondent reveals that when he questioned the presence of the petitioner in the Bar room, the petitioner said he has come to the bar only to kill him and started abusing him with degrading words. This has been corroborated and endorsed by the other witnesses like Aldrin Earmarshall and Kavaskarrajan.

17. Further more, on perusing the complaint given by the petitioner herein which he cannot now deny, this Court find that he admits the interception by the second respondent and his son questioning his visit to the bar room being an absconding accused in an attempt to murder case. He was rescued by the other advocates were present there. Now looking at Section 294(b) IPC to attract the said section any utterance of word made annoyance of others, or near any public place shall be punished imprisonment of either description for a term which may extend to three months, or with fine, or with both.

18. In the instant case, it is alleged in the complaint that the obscene words uttered by the petitioner herein in the bar association room, which is to be considered as common public place. Bar room can be decided only as a public place since it is within the court campus. The ingredients of Section 294(b) IPC is squarely attracted.

19. Bar Association space are provided to the Advocates by the Court for their convenience to meet their clients. There cannot be any exclusivity or privacy for them to call it as a private place.



In certain pronouncement of Court while dealing with the expression, public place viz., a viz., legislation like NDPS Act or Motor Vehicles Vct, the words, 'public place', interpreted in the context of the said legislation, the judgment rendered in respect of those legislation and definition under those legislation cannot be telescoped into IPC when an intend of legislation is to prosecute the offences affecting the public health, safety, convenience, decency and morals under chapter XIV of IPC.

20. A very unique submission made by the learned counsel for the petitioner that the language used under Section 294(b) IPC is whoever to the annoyance of others does any obscene act in any public place, or sings, recites or utters any obscene song, ballad or words, in or near any public place. When there is no public within the bar association room, the alleged utterance made by the petitioner herein will not fall under the definition of Section 294 (b) IPC. This submission is extension of the arguments that the bar association is not a public place. The said argument is nothing but the manifestly erroneous assumption in the minds of a few advocates that they are above all laws and they are immune from all laws. It is not necessary when annoyance caused all present there should jointly give the complaints, it is sufficient if any one among there can set law in motion.

21. The other contention that in a case and case in counter, the investigating officer has not followed the police standing order is not a appealing ground to quash the proceedings. As rightly pointed out by the learned Additional Public Prosecutor , the police standing order is a guidelines for the investigating officer how to conduct investigation, particularly, when there is a case and case in counter, it is not necessarily one complaint must be accepted and other must be rejected and there can be only one charge. In law, if offence is made out in both the case and case in counter, the investigating officer is bound to file his final report in both cases and the judicial officer would try both the case jointly and decide the veracity of the witnesses.

22. In this case, the complaint of the petitioner herein has been investigated and final report has already been filed against the second respondent and two others in C.C.No.121 of 2019 on the file of the learned Judicial Magistrate, Aruppukottai.

23. The complaint of the second respondent, which has been investigated and completed against the petitioner herein and taken on file as C.C.No.122 of 2019 by the learned Judicial Magistrate, Aruppukottai has to be tried together with the case registered, investigated and charge sheeted by the first respondent and now transferred, renumbered and taken on file as C.C.No.121/2019 by the learned Judicial Magistrate. Since the final report against the petitioner herein has not only made out, a case to be tried for



24. With the above direction, this Criminal Original petition is dismissed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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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 Inspector of Police,
South Police Station,
Tuticorin.

2.The Judicial Magistrate No.I,
Tuticorin.

3.The Judicial Magistrate, Aruppukottai.

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

+1 CC to M/s.L.SHAJI CHELLAN, Advocate (SR-38522[F] dated 14/12/2021)

Crl.O.P(MD)No.13481 of 2017

13.12.2021

RD(31.12.2021) 6P 6C