



Crl.O.P.No.3000 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.06.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.3000 of 2020

and

Crl.M.P.Nos.1802 & 1803 of 2020

1. Ramu

2. Narayanan

3. Gowthaman

4. Thilagavathi

... Petitioners

Vs

C. Jayavelu

... Respondent

**Prayer:** Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records and quash the C.C.No.63 of 2018 on the file of the Judicial Magistrate No.I, Walajapet, Vellore District.

For Petitioners : Mr.K. Mohanamurali

For Respondent : No Appearance

**ORDER**

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.63 of 2018 on the file of the Judicial Magistrate No.I, Walajapet, Vellore District.



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2. The respondent is the complainant. He lodged a private complaint for the alleged offence punishable under Sections 294(b), 447, 427, 323, 324 and 506(ii) of IPC, in which, the petitioners are arrayed as A1 to A4.

3. The case of the respondent is that on 11.05.2018, the petitioners trespassed into his property and cut down the coconut trees. When it was prevented by the defacto complainant, the petitioners abused him in a filthy languages and also attacked him by hands and legs. In this regard, on 12.05.2018, the respondent lodged a police complaint and even then no action has been taken by the police. Hence, the respondent filed a private complaint under Section 200 of Cr.P.C, before the Judicial Magistrate No.I, Walajapet and the same has been taken cognizance and there is summons against the petitioners.

4. The learned counsel for the petitioners would submit that the subject property, comprised in Survey No.952/10 situated at Thimiri Village, Arcot Taluk, Vellore District, owned by the first petitioner and



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he was also issued patta No.2147. The respondent is a neighbour of the petitioners who frequently created disturbance with regard to the boundary. Therefore, the first petitioner approached the Tahsildar to survey the said property on payment of requisite fee. On the request, the Tahsildar surveyed the land and put up boundaries in the property owned by the first petitioner herein. Even then, the respondent caused disturbance to the petitioners' peaceful possession and enjoyment of the subject property and as such, the petitioner was constrained to file a suit in O.S.No.8 of 2018 on the file of the District Munsif-cum-Judicial Magistrate No.I, Walajapet, Vellore District, for injunction. The said suit was decreed by a Judgment and Decree dated 07.08.2018.

5. While being so, the present false complaint has been foisted against the petitioners, before the Inspector of police, Thimiri Police Station, Vellore District. Based on the complaint, enquiry was conducted and in fact it was closed. Even then, the respondent filed a private complaint as if the petitioners trespassed into the property.



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6. Though notice has been served on the respondent and his name is printed in the cause list, there is no representation for the respondent either in person or through counsel.

7. Admittedly, the first petitioner owned property comprised in Survey No.952/10 situated at Thimiri Village, Arcot Taluk, Vellore District. He was also issued Patta No.2147. Since, the respondent caused disturbance to the petitioners peaceful possession and enjoyment of the subject property. The first petitioner filed a suit in O.S.No.8 of 2018 on the file of the District Munsif-cum-Judicial Magistrate No.I, Walajapet, Vellore District, for injunction. It was decreed in favour of the first petitioner by a Judgment and Decree dated 07.08.2018. Therefore, the possession and enjoyment of the subject property was confirmed by the Civil Court. All the petitioners are family members and they are in possession and enjoyment of the subject property. Therefore, there is no question of trespass into the property under Section 447 of IPC as against the petitioners.



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8. That apart, even according to the respondent, the occurrence took place in the house of the respondent. Therefore, the offence under Section 294(b) of IPC is not at all attracted as against the petitioners. In this regard it is relevant to extract the Section 294(b) of IPC, as follows :-

*"294. Obscene acts and songs —Whoever, to the annoyance of others— (a) does any obscene act in any public place, or (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."*

Admittedly, there is absolutely no words uttered by the petitioners as such to constitute the offence under Section 294(b) of IPC, there is no averments and allegations. Further the charges do not show that on hearing the obscene words, which were allegedly uttered by the petitioners, the witnesses felt annoyed. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the petitioners annoyed others, it cannot be said that the ingredients of the offence under Section 294(b) of IPC is made out.



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9. It is relevant to rely upon the judgment reported in **1996(1) CTC 470** in the case of **K.Jeyaramanuju Vs. Janakaraj & anr.**, which held as follows :-

*"To prove the offence under Section 294 of IPC mere utterance of obscence words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case."*

The above judgment is squarely applicable to the present case and therefore, the offence under Section 294(b) of IPC is not at all attracted as against the petitioners.

10. Insofar as the offence under Section 506(ii) of I.P.C is concerned, threat should be a real one and not just mere words when the person uttering does not exactly mean what he says and also when the person to whom threat is launched does not feel threatened actually. Whereas, in the case on hand, there is no averment to attract the offence under Section 506(ii) of I.P.C. Therefore, the present private complaint is nothing but a clear abuse of process of law and it cannot be sustained as against the petitioners.



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11. Considering the facts and circumstances of the case, the proceedings in C.C.No.63 of 2018 on the file of the Judicial Magistrate No.I, Walajapet, Vellore District is hereby quashed and accordingly, this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

08.06.2022

Internet:Yes

Index:Yes/No

Speaking/Non speaking order

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To

1. The Judicial Magistrate No.I,  
Walajapet, Vellore District.

2.The Public Prosecutor,  
High Court, Madras.



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**G.K.ILANTHIRAIYAN. J.**

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