



Crl.O.P.No.4451 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.4451 of 2020

and

Crl.M.P.Nos. 2542 and 2543 of 2020

1.P.Nakkeeran
2.Jayaram Venkatesan
3.Chandramohan
4.Muralidharan

... Petitioners

Vs.

1.State, represented by Inspector,
R 11, Royala Nagar Police Station,
Chennai - 600 089
In Crime No.1439 of 2017,
Royala Nagar Police Station.

2.R.A.Kumar

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records of the case in C.C.No.14 of 2020 on the file of the learned Judicial Magistrate No.1, Poonamallee in Crime No.1439 of 2017, Royala Nagar Police Station, Chennai and quash the same.



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For Petitioners : Mr.V.Suresh
For R1 : Mr.A.Gopinath
Government Advocate (Crl.Side)
For R2 : No appearance

ORDER

This petition has been filed to quash the proceedings in C.C.No.14 of 2020 on the file of the learned Judicial Magistrate No.1, Poonamallee, thereby taken cognizance for the offences under Sections 143, 147, 149, 504, 294(b), 323 and 506(1) of IPC, in Crime No.1439 of 2017, as against the petitioners.

2. The learned counsel appearing for the petitioners would submit that on the complaint lodged by the second respondent, the first respondent registered a case in Crime No.1439 of 2017 for the offences under Sections 143, 147, 149, 504, 294(b), 323 and 506(1) of IPC, alleging that the petitioners are the members of Arappor Iyakkam, a voluntary, citizen's body. On the date of occurrence, a public meeting had been organized by the petitioners in which they spoke about the civic problems which they are facing in their localities. At that time, the first petitioner alleged to have spoken about the encroachment by



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the local Kalasathamman Temple officials on Government Poramboke land by a particular caste alone. Thereafter, there was a wordy quarrel between the petitioners and the defacto complainant and they attacked each other.

3. He would further submit that there are absolutely no specific allegations as against the petitioners. The petitioners are members of Arappor Iyakkam an independent, non-partisan group of young professionals working on issues of governance, transparency and civic action. In Ramapuram Village there was a small temple which was surrounded by the Government land. The defacto complainant is one of the temple committee members. A dispute arose in the year 1990 in respect of ownership and possession of the said land. He filed a Civil Suit in O.S.No.2191 of 1991, on the file of the District Munsif Court at Poonamallee, claiming the Government Poramboke land around the temple, belonged to the temple and it was dismissed by the Trial Court. Thereafter, the Government passed order in G.O.Ms.No.571, (Revenue Department) dated 28.10.1999, sub dividing the Government Poramboke land around the temple into four parts:

- (i) One part was assigned to TNEB for building TNEB substation;
- (ii) Another part was allotted for the purpose of a public road leading to the EB sub station; and



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(iii) The other two portions were retained and shown as Government Poramboke land.

4. However, the temple persons/authorities attempted to put up construction on the said land thereby, blocking the access way for general public. Therefore, the first petitioner lodged a complaint before the Tahsildar, Maduravoyal. In pursuant to the said complaint, the Corporation of Chennai issued a stop work notice to the temple authorities. Thereafter, the Tahsildar, Maduravoyal convened a peace committee meeting and even then the temple authorities did not stop the construction. Therefore, the first petitioner was constrained to lodge a complaint before the Corporation of Chennai and on receipt of the same, an Assistant Engineer, Corporation of Chennai, lodged police complaint with the first respondent. The FIR was also registered in Crime No.1482 of 2017, dated 22.11.2017. Only to escape from the clutches of law, the defacto complainant lodged the present complaint with the bald and vague allegations. A perusal of FIR and the impugned charge sheet revealed that the entire charges are bald and vague, without any specific overtact as against the petitioners to substantiate the charges.



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5. In order to bring the charges to whom that there should be three

ingredients which are necessary:

- (a) an assembly of 5 or more persons;
- (b) who have a common object; and
- (c) the common object must be relates to one of the five types specified in the provisions.

6. Therefore, no specific averments and allegations are made as against the petitioners to attract the charges as alleged by the prosecution. Even according to the case of the prosecution, no one was injured by the alleged occurrence. Therefore, there is no record to show that the defacto complainant got injured. Even according to the charges, the petitioners threatened the defacto complainant with dire consequences. They also scolded him with filthy languages.

7. To attract the offences under Section 294(b) of IPC, there must be an uttering of words to affect the person who lodged the complaint. In this regard it is relevant to extract the Section 294(b) of IPC, as follows :-



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"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."

8. 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 can not be said that the ingredients of the offence under Section 294(b) of IPC is made out. 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 obscene words are not sufficient but there must be a



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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.

9. Insofar as the offence under Section 506(i) of I.P.C is concerned, to attract the offence, threat and intention to cause an alarm are main ingredients. The third ingredient is that the intention must be to cause any person to do any act which he is not legally bound to do or to omit to do any act which that person is legally entitled to do, subsequent to the main ingredients. Whereas in the case on hand, even according to the case of the prosecution, the alleged threats issued by the petitioner were only empty threats and they had no effect on the complainant.

10. In this regard, It is relevant to rely upon the judgment of this Court made in ***Crl.O.P.(MD)No.11030 of 2014*** in the case of ***Abdul Agis Vs. State through the Inspector of Police***, which reads as follows:-

"7.It is seen from the statements recorded under



Section 161(3) of Cr.P.C. of the second respondent/ defacto complainant that it does not contain any obscene words, which were uttered by the petitioner herein and the entire allegations are very simple in nature. It is also seen from the statement of one Uthami, that the petitioner threatened the defacto complainant with dire consequences when he dashed the defacto complainant. The entire allegations are trivial in nature. Further, to attract the offence under Section 506(i) of I.P.C., there was a threatening only by words. As pointed by the learned counsel appearing for the petitioner, the threat should be a real one and not just a mere word when the petition uttering does not exactly mean what he says and also when the person to whom threat is launched does not feel threatened actually. Therefore, the offences under Sections 294(b) and 506(i) of I.P.C. are not made out as against the petitioner herein and also the entire criminal proceedings is clear an abuse of process of Court. Therefore, this Court is inclined to quash the entire proceedings.”

11. The essential ingredient to attract the offence under Section 323 of I.P.C is that any act with the intention of thereby causing hurt to any person or with the knowledge that he is likely thereby to cause hurt to any person. Therefore, there is no averment to attract the offence under Section 323 of I.P.C.



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12. Therefore, no specific averments and allegations are made to attract any of the offences as alleged by the prosecution. Therefore, the entire proceedings is nothing but a clear abuse of process of law and it cannot be sustained as against the petitioners. The proceedings is nothing but only to wreak vengeance as against the petitioners, for the reason that the petitioners initiated the proceedings as against the encroachers by the temple authorities in the Government Poramboke land.

13. In this regard, it is relevant to extract the judgement reported in **(1992) SCC CrL. 426** in the case of **Bajanlal v. State of Haryana**, wherein the Hon'ble Supreme Court of India has listed out the following category of case in which the criminal proceedings can be quashed using the inherent jurisdiction of the High Court under Section 482 Cr.P.C.:

"102.....

.....

7. *Where a criminal proceeding is manifestly attended with malafide and/or where the proceedings is maliciously instituted with an ulterior motive for wrecking vengeance on the*



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*accused and with a view to spite him due to
private and personal grudge."*

Therefore, the impugned complaint is nothing but clear abuse of process of law and it cannot be sustained as against the petitioners.

14. Accordingly, this Criminal Original Petition stands allowed and the C.C.No.14 of 2020 on the file of the learned Judicial Magistrate No.1, Poonamallee, in Crime No.1439 of 2017, Royala Nagar Police Station, Chennai, is hereby quashed. Consequently, connected miscellaneous petitions are closed.

28.06.2022

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order

cda/mn
To

1. The Judicial Magistrate No.1, Poonamallee.
2. The Inspector of Police,
R 11, Royala Nagar Police Station,
Chennai - 600 089.
3. The Public Prosecutor,
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.

mn

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