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CRL.O.P.NO.6569 / 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON: 29 / 11 / 2022

ORDERS PRONOUNCED ON: 21 / 12 / 2022

CORAM

THE HON'BLE MS.JUSTICE R.N.MANJULA

CRL.O.P.NO.6569 OF 2021

AND CRL.M.P.NOS.4359 & 4360 OF 2021

1.Sadasivam

2.Mandrachalam

3.Vijayakumar

4.Raja

5.Arusamy

6.Nadaraj

... Petitioners

V.S.

1.The State by Inspector of Police

Sulur Police Station

Coimbatore District.

Crime No.245 of 2016

2.Myilsamygounder

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, with a prayer to call for the records relating to the Charge Sheet filed in C.C.No.351 of 2020 on the file of the Judicial Magistrate, Sulur, quash the same.

For Petitioners : Mr.D.R.Arunkumar

For Respondent-1 : Mr.A.Damodaran
Additional Public Prosecutor



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For Respondent-2 : Mr.E.K.Kumaresan

ORDER

This Criminal Original Petition has been preferred to call for the records relating to C.C.No.351 of 2020 on the file of the learned Judicial Magistrate, Sulur and to quash the same.

2. The petitioners are the accused 1, 3, 4, 5, 6 and 7 in Crime No.245 of 2016 on the file of Sulur Police Station, Coimbatore District, for the offences initially registered under Sections 120(b), 465, 468, 471, 294(b), 448 and 506(ii) IPC later altered to Sections 147, 148, 294(b), 448, 506(ii) and 149 IPC.

3. On 13.12.2015 at about 01.00 pm., the petitioners along with the second accused, went to the house of the defacto complainant by forming an unlawful assembly among themselves by having weapons in their hands and trespassed into the house of the second respondent and abused him in filthy language; the first accused showed the weapons and threatened the defacto complainant and his wife Rajammal with dire consequences. On the above allegation, a case has been registered in FIR No.245 of 2016 for the offences under Sections 120(b), 465, 468, 471, 294(b), 448 and 506(ii) IPC. Later, the penal provisions have been



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altered to Sections 147, 148, 294(b), 448, 506(ii) and 149 IPC; after investigation, a final report has been filed against the accused for the offences under Sections 147, 148, 294(b), 448, 506(ii) and 149 IPC.

4. The learned counsel for the petitioners submitted that the first accused is the son of the defacto complainant. The civil dispute between the father and son has been exaggerated and given with criminal colour; in fact, a Civil Suit has been filed by the defacto complainant against the first petitioner and another son in O.S.No.565 of 2015 for the relief of partition to divide the suit properties into three equal shares and the same is pending on the file of the learned District Judge, Coimbatore.

5. The first petitioner has also filed a Suit against the defacto complainant and others in O.S.No.581 of 2015 for the relief of partition on the file of the learned District Judge, Coimbatore, to divide the property into two equal shares.

6. In fact, the wife of the first petitioner has filed a Suit in O.S.No.1731 of 2015 on the file of the learned Subordinate Judge, Coimbatore, against the defacto complainant and the brother of the first



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petitioner in respect of the very same property for the relief of permanent injunction and in fact, she was given with the relief of temporary injunction also.

7. Under such circumstances, it cannot be claimed that the petitioner has committed the offence of trespass. Because the first petitioner himself is a joint owner of the Suit property, his entry into the Suit property cannot be considered as trespass. There is no specific overtact stated against each of the accused. The allegations with regard to criminal intimidation is also in a too generalised manner and hence the materials available on record, does not make out a case for the offences punishable under Sections 148, 294 and 506(ii) IPC.

8. The defacto complainant is the father of the first petitioner. The first petitioner has produced the copies of the plaint filed by him and the defacto complainant in order to show that there are civil disputes pending between himself and his father in respect of the family properties. In fact, the first petitioner's wife has filed a Civil Suit in O.S.No.1731 of 2015 on the file of the learned Subordinate Judge, Coimbatore, for permanent injunction in respect of the same property and



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in which, the Civil Court has granted an order of interim injunction, in her favour. In that case, the entry of the first petitioner into the defacto complainant's house cannot be considered as an offence of trespass.

9. However, the learned Additional Public Prosecutor submitted that apart from the first petitioner, the other accused had also gone along with him into the house of the defacto complainant and they do not have any right over the property and hence, the offence of trespass is made out against the petitioners.

10. The defacto complainant has stated in his statement that the first petitioner along with other accused came with weapons. From the above statement, it cannot be known what kind of weapons have been taken by the accused. In order to punish a person for the offences under Sections 147, 148 and 149 IPC, it should be shown that the accused had assembled and used force or violence in pursuant of any common object. Neither from the statement of the defacto complainant nor from the statement of his wife, who was said to be present at the house at the time of occurrence, such facts are revealed.



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11. With regard to the statement about the weapons, there is only one general word is stated. The kind of weapon is used during the occurrence is not described. In order to punish the accused for an offence under Section 148 IPC, there should be some materials available to show that the accused had armed with deadly weapons. So, in the absence of such materials, it cannot be concluded that the offences under Sections 147 and 148 have been made out.

12. From the further statement of the defacto complainant, it is stated that the petitioner and others had abused in filthy language after they entered into the house. For an offence under Section 294(b), there should be some basic ingredient to show that the occurrence had taken place in a public view. Even according to the statement of the defacto complainant and his wife, it is stated that the accused have abused him in filthy language after they had entered into the house. Since the defacto complainant's house is not a public place, the offence under Section 294(b) is also not made out.

13. Since there are no ingredients to prove any unlawful



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assembly or that the petitioners had deadly weapons in their hands, after the petitioners entered into the house of the defacto complainant and they are known persons to the first petitioner, who is the son of the defacto complainant, the offence of trespass is not made out. As stated already, the first petitioner is also a co-owner of the subject property and over which, his wife also has got an injunction in her favour.

14. Since there is no materials available to show that the petitioners have used force or violence, it cannot be said that they had trespassed into the house of the defacto complainant. In order to prove an offence for trespass under Section 448 IPC, it should be shown that the accused had entered into the property with an intention to commit any offence or to intimidate the person in possession of the property. Since there are no such ingredients is shown to be present or that the accused had exercised force on violence, it cannot be stated that the accused had committed the offence of trespass under Section 448 IPC.

15. The next penal provision for which the accused have been charged is for the offence under Section 506(ii) IPC. So far as the



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offence under Section 506(ii) IPC is concerned, there should be some materials to show that the accused had caused threat to cause death or grievous hurt to the defacto complainant. The mere words of threat in a fit of anger are not sufficient to make out an offence under sec.506(ii) I.P.C. The complainant has stated an one line generalised allegation that he was threatened by the accused.

16. In the absence of such ingredients, the offence under Section 506(ii) IPC also cannot be made out. If the accused are subjected to trial for the offence under Section 506(ii) IPC that will not serve any purpose. Since the origin of the complaint is the civil dispute between the defacto complainant and the first petitioner, who are father and son, there are possibilities for exaggerations.

17. In this regard, it is relevant to refer the judgment of the Hon'ble Supreme Court in ***STATE OF HARYANA VS. BHANJANLAL*** [1992 SUPP (1) SCC 335].

"The following categories can be stated by way of illustration wherein the extra-ordinary power under [Article 226](#) or the inherent powers under [Section 482](#) of the Code of Criminal Procedure can be exercised by the High Court either to prevent abuse of the process of



any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised:

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section 155\(2\)](#) of the Code.

(3) where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code.

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) where there is an express legal bar engrafted in any of the provisions [of the Code](#) or the concerned Act (under which a criminal



proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in [the Code](#) or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

18. The materials as dealt above and in the background of the civil disputes between the defacto complainant and his son, who is the first petitioner, do not probabalise the commission of the offences as seen in the charge sheet. In such context of facts, no useful purpose will be served if the accused are subjected to trial and that would only waste the time of the court. Hence I feel it is appropriate to invoke the jurisdiction of this court under 482 Cr.P.C to meet the ends of justice by quashing the proceedings against the petitioners.



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19. In view of the above stated reasons, this Criminal

Original Petition is allowed and the Charge Sheet filed in C.C.No.351 of 2020 on the file of the learned Judicial Magistrate, Sulur, is quashed.

Consequently, connected miscellaneous petitions are closed.

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Index : Yes/No
Internet : Yes/No
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R.N.MANJULA, J.

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To

- 1.The Judicial Magistrate
Sulur.
- 2.The Public Prosecutor
High Court of Madras.

PRE-DELIVERY ORDER MADE IN
CRL.O.P.NO.6569 OF 2021

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