

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.06.2022

CORAM

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.NO.8950 OF 2020

AND

CRL.M.P.NO.4197 OF 2020

Priyadarshini

... Petitioner/2nd Accused

.Vs.

1. The State by
The Inspector of Police
Villianur Police Station,
Puducherry - 605 110.

2. M.Kannapiran

... Respondents/Complainant
& Defacto Complainant

PRAYER:-

Criminal Original Petitions filed under Section 482 of Cr.P.C, praying to call for the records and quash the case in FIR No.409 of 2020 on the file of the first respondent.

For Petitioner : Mr.R.John Sathyan

For Respondents

For R1 : Mr.V.Balamurugane
Public Prosecutor (Pondy)

For R2 : Mr.S.I.Sharukumar
For Mr.K.Elangovan

O R D E R

The petition has been filed to quash the FIR in Crime No.409 of 2020 on the file of the first respondent, registered for the offences under Sections 294(b), 427, 448 and 506(ii) of IPC r/w. Section 34 of IPC, as against the petitioner.

2. The case of the prosecution is that on 06.06.2020, when the defacto complainant was at home, his brother-in-law viz.,

the first accused herein along with the petitioner and other 20 persons came to his home and demanded a sum of Rs.3 crores, which was entrusted to him. It is further alleged that when the defacto complainant told that the earlier complaint lodged against him is pending before the Central Crime Branch and asked to co-operate with the enquiry, the first accused along with the petitioner entered into the bedroom and threatened the defacto complainant that they would murder him and family members. They also damaged the CCTV camera fixed in the defacto complainant's home. Hence the complaint.

3. The learned counsel appearing for the petitioner would submit that the second respondent lodged the present complaint as a counter blast to the complaint dated 18.05.2020, lodged by the first accused. As per the said complaint, the first accused entered into a land deal with one Mohammed Ali, Karaikal and he paid a sum of Rs.5 lakhs as advance and negotiated to purchase 100 acres of adjacent land which was orally agreed. The first accused had sought advances from the prospective buyers as he had agreed to pay an advance of Rs. 3 crores. Further the prospective buyers asked the first accused to come to Chennai on 11.05.2020. At that juncture, the second respondent/defacto complainant called the first accused and he was taking about the safety issues while traveling with money. Therefore, the second respondent readily agreed to help the first accused.

3.1. While be so, on 11.05.2020, the first accused and the second respondent met in Aarya's Hotel, Thindivanam and the second respondent drove his car and reached Chennai. A sum of Rs.3 crores given by the prospective buyers was loaded in the car driven by the second respondent in a suitcase and a handbag and the second respondent insisted that he traveled in his car and followed him. Accordingly, the first accused and another followed the car driven by the second respondent till the Office of the Director General of Police, Kamaraj Road. Thereafter second respondent got disconnected and could not be contacted. When the first accused was nearing Tindivanam, the second respondent called him and asked to come to his house. Thereafter, the second respondent informed that while he was driving, he was chased by police and in order to escape, he dumped the money at Greenways Road and disconnected the phone. Therefore, the first accused lodged complaint in which the second respondent had taken full responsibility and assured to settle the money. Accordingly, the petitioner being wife of the first accused went to the house of the second respondent and the second respondent and his wife requested a couple of days to settle the entire amount. In fact, the second respondent had given written undertaking in the presence of witnesses, thereby he would settle the entire amount.

3.2. In pursuant to the said complaint dated 18.05.2020, it was referred to The Superintendent of Police, Villupuram. In fact, the first accused and the second respondent were appeared before the Superintendent of Police, Villupuram for enquiry. During the enquiry, the second respondent admitted that he had given money to one Mohan, Ariyur, Puducherry. Therefore, the Superintendent of Police, Villupuram, suggested that the parties being relatives could resolve the dispute through negotiations. In pursuant to the said suggestion, the petitioner along with the first accused and 20 others went to the house of the second respondent, where the second respondent abused and attempted to assault the first accused. Thereafter, the impugned FIR has been registered for the offences under Sections 294(b), 427, 448 and 506(ii) of IPC r/w. Section 34 of IPC of IPC.

3.3. The learned counsel appearing for the petitioner would submit that even according to the defacto complainant, no offence is made out as alleged by the prosecution. The present complain is noting but counter blast to the earlier complaint lodged by the petitioner's husband dated 18.05.2020. Hence he prays to quash the FIR in Crime No.409 of 2020 on the file of the first respondent.

4. The learned counsel appearing for the second respondent/defacto complainant would submit that there are specific allegations leveled as against all the accused persons and it is only FIR and it is not an encyclopedia. Now the investigation is almost completed and as such at this juncture, quashment of the FIR is nothing but clear abuse of process of Court and prayed for dismissal of the petition.

5. The learned Public Prosecutor (pondy) appearing for the first respondent/police submitted that totally there are three accused on the complaint lodged by the second respondent which registered in Crime No.409 of 2020 for the offences under Sections 294(b), 427, 448 and 506(ii) of IPC r/w. Section 34 of IPC of IPC. The second accused viz., the petitioner herein alone filed this petition and the investigation is stayed insofar as the petitioner alone. Insofar as the other accused persons are concerned investigation is completed and laid charge sheet and the same has been taken cognizance in C.C.No.473 of 2020 on the file of the learned Judicial Magistrate No.III, Puducherry, and it is pending for trial.

6. Heard Mr.R.John Sathyan, learned counsel appearing for the petitioner, Mr.V.Balamurugane, learned Public Prosecutor (Pondy) appearing for the first respondent and Mr.S.I.Sharukumar, learned counsel appearing for the second respondent.

7. It is seen that there are totally three accused and the petitioner is arrayed as second accused. The reading of FIR itself revealed that the first accused and his relatives along with 20 others came to the defacto complainant's house. Thereafter, the first accused demanded to repay a sum of Rs.3 crores which was paid by him. The second respondent replied that, in this regard already the first accused lodged complaint, which is pending on the file of the Central Crime Branch, Chennai and therefore requested the first accused to co-operate for the enquiry. At that juncture, the first accused and others trespassed into the house of the second respondent and scolded him with filthy language. They also threatened with dire consequences.

8. Admittedly, the first accused and others had visited the house of the second respondent. Further the first accused and others were allowed to enter into the house by the second respondent. Therefore, there is no question of trespass, since the first accused and the second respondent are very close relatives. The entire allegations are very bald and no specific allegations leveled as against the petitioner. Even according to the second respondent the first accused and other relatives and 20 friends were entered into the house. Therefore, as against the petitioner there is no specific allegation to attract any of the offences.

9. To attract the offence 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 :-

"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."

10. Admittedly, there is absolutely no words uttered by the petitioner 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 petitioner, 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 petitioner 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 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 petitioner. Therefore, the impugned complaint is nothing but clear abuse of process of law and it cannot be sustained as against the petitioner.

11. Accordingly, this Criminal Original Petition stands allowed and the FIR in Crime No.409 of 2020 on the file of the first respondent is hereby quashed as against the petitioner alone. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Villianur Police Station,
Puducherry - 605 110.
2. The Public Prosecutor (Pondicherry),
High Court, Madras.

CRL.O.P.NO.8950 OF 2020 AND
CRL.M.P.NO.4197 OF 2020

SR(CO)
PBS/15/07/2022