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Crl.R.C.No.580 of 2014

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.580 of 2014

G.A.Thiyagarajan

... Petitioner

Vs.

S.Sivakumar

... Respondent

PRAYER: Criminal Revision Petition filed under Sections 397 r/w 401 of Criminal Procedure Code, to call for the records of the case in C.M.P.No.1529 of 2014 on the file of the learned Judicial Magistrate No.I, Poonamallee and reverse the order dated 11.04.2014.

For Petitioner : Mr.C.Saravanan

For Respondent : Mr.B.Harikrishnan

ORDER

The petitioner filed a private complaint against the respondent for the offence under Sections 447, 427, 294(b) and 500 IPC in C.M.P.No.1539/2014. The learned Judicial Magistrate No.I, Poonamallee by order dated 11.04.2014 dismissed the complaint finding no prima facie



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case. Against which, the present revision petition is filed.

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2.The complaint is that the complainant who is an Advocate residing at No.5, B.L.N.Prasad Nagar, Valasarawakkam, Chennai for the past 30 years. The respondent/accused started his construction in the year 2012 in the same street. At that time, on 01.06.2012 the respondent pruned the branches of Drumstick tree which fell down on the petitioner's Honda Car and caused damages and the petitioner was not available at that time. Further, the respondent trespassed into the petitioner's property and caused damages, on the guise of clearing branches which were obstructing the overhead power lines. The windshield of the car got damaged and a dent caused to the roof of the car. When the petitioner returned back, he found the damages enquired the same, ten minutes later the respondent came there and used abusive language and threatened the petitioner. Within few minutes one Mr.Ravi, Sub-Inspector of Police attached to the jurisdictional Police Station came there and intervened. When the petitioner attempted to lodge a complaint, the same was not entertained, the Sub-Inspector of Police supported the respondent. Again on 01.09.2012 branches of avenue trees



indiscriminately cut, citing obstruction to the overhead electric lines, the cut trees and branches, caused obstruction to the free movement of traffic. The petitioner's sister Mrs.Girija questioned the same, the respondent abused her, for which she lodged a complaint and a case in Crime No.2369/2012 for the offences under Sections 294(b) and 506(i) IPC registered, after investigation charge sheet filed and the case in C.C.No.5/2013 pending.

3.The respondent claiming to be Executive Secretary of the local Residents Welfare Association indulging in arbitrary actions, abusing the petitioner and his sister. The petitioner as well as his sister both Advocates, they were abused and threatened. On 20.11.2012 the respondent called the petitioner and pressurized him to advise his sister to withdraw the complaint. On 22.11.2012, there was hearing for the case in C.C.No.5/2013 before the learned Judicial Magistrate No.I, Poonamalee, at that time the respondent threatened the petitioner's sister, again a complaint was lodged and a case in Crime No.2552/2012 for the offence under Sections 294(b) and 506(i) IPC was registered by the Poonamallee Police. The respondent approached the petitioner along with his Advocate, confessed about the



incidents, threat exerted and use of abusive language, which was recorded by the petitioner. Since the Police failed to take any action, the petitioner lodged a private complaint before the learned Judicial Magistrate No.I, Poonamallee. The learned Judicial Magistrate failed to entertain the complaint for the reason of inordinate delay and finding the petitioner being an Advocate knowing the procedure lodged the complaint belatedly, failed to consider the recordings of the respondent's confession in Compact Disc dismissed the complaint. Hence, the revision petition is filed.

4.The further contention of the learned counsel for the petitioner is that the order passed by the Lower Court is contradictory to law and facts. Further, the Lower Court failed to consider the provisions of Section 468 Cr.P.C. which prescribes limitation for initiation of criminal prosecution. The complaint was filed well within the period of its limitation, in the complaint the petitioner given reason for the delay and the Police supporting the respondent, not entertaining the petitioner's complaint. He would further submit that the delay aspect has to be considered only at the time of final disposal and not at the initial stage. He further submitted that



WEB CONTENT

the petitioner's complaint discloses prima facie cognizable offence and hence, the Trial Court ought to have taken the complaint on file, on the contrary, dismissed the complaint. The learned counsel for the petitioner also filed a written submission and submitted that the learned Magistrate committed error by holding that the petitioner failed to prove that he had given a complaint earlier to the Police, being an Advocate the petitioner is expected to know the procedure. The petitioner had categorically averred in the complaint about the respondent influencing the Police which is the reason for not entertaining his complaint and the reason for the delay explained in the complaint. The respondent's confession about the abuse was made during the subsequent meeting on 20.11.2012, only after getting concrete proof along with the photographs of the damage to the car and the Compact Disc [CD] recording, complaint was lodged. It is further submitted that the complaint was lodged on 02.07.2013 which is within the period of limitation and the Trial Court failed to consider these aspects.

5.In support of his contentions, the learned counsel for the petitioner produced the photographs, FIR in Crime No.2369/2012, FIR in Crime



No.1552/2012 and other documents. The learned counsel for the petitioner

also relied upon the decisions, namely, *Assistant Collector of Customs, Bombay and another vs. L.R.Melwani and another* [AIR 1970 SC 962], *Dhuleswar Behera vs. The State* [(1982) Cril.J. 2346], *Polavarapu Jagadiswararao vs. Kondapaturi Venkateswarlu and another* [(1991) Cril.J. 1419], *Harnam Singh vs. Everest Construction Co. and others* [2004 (6) SCC 754] and *V.D.Grahalakshmi vs. Narayanan Venuprasad Menon* [2010 (2) Crimes 238] for the point that no complaint can be quashed merely on the point of delay, when reason for delay has been given. Further, the confession of the respondent which is produced by way of Compact Disc [CD] to be considered as an extrajudicial confession which is voluntary. He also stressed the point both the course under Sections 154 and 200 Cr.P.c. are open and available to the private citizen and filing a complaint directly under Section 200 Cr.P.C. without invoking Section 154 Cr.P.C.. Further for the point of limitation and for the point that during initial stage the learned Magistrate to apply the test of a prima facie and not to formulate opinion about prospects of conviction or acquittal.

6.The learned counsel for the respondent submitted that the petitioner



with an ulterior motive filed the complaint. He would submit that the petitioner and his sister are Advocates residing in the same locality both were not appreciative of the fact that the respondent being the Executive Secretary of the Local Residents Welfare Association took steps to clear the obstruction to the overhead power line, the respondent took steps to clear unauthorized parking who took steps to keep the residential area in a clean and serene atmosphere. The petitioner and his sister who claim to be residents of the area for decades, objected for the respondent imposing discipline, hence creating trouble. The respondent was for the welfare of the residents. He further submitted that the petitioner and his sister wanted the respondent and the Welfare Association to act according to their dictum which was resisted, hence false complaint was lodged. He would further submit that the respondent is already facing two criminal complaints at the behest of the petitioner's sister, the present complaint by the petitioner is only to support his sister's case. He further submitted that the Trial Court considered the statement and documents produced by the petitioner and dismissed the complaint by a well reasoned order, on the point of limitation, it observed that delay in lodging the complaint in the attendant



circumstances is motivated one, the complaint was dismissed on merits and not on the point of limitation.

7.Considering the submissions and on perusal of the materials, it is not in dispute that the respondent is the Executive Secretary of the Local Residents Welfare Association, the petitioner and the respondent are residing in the same locality, pruning of branches are common when there is an obstruction to the overhead power line. The petitioner's case is that he was not present at the time of pruning of branches, later he came to know about the same and at that time, the respondent came and explained to him about the happenings, the only grievance seems to be the respondent not tendered any apology but was giving reasons for the action. The petitioner is an Advocate, the alleged occurrence is said to have taken place on 01.06.2012, recording of confession is on 20.11.2012 and thereafter complaint was lodged on 02.07.2013 with a delay. The audio recordings cannot be straight away considered as an evidence, there are procedures to be followed but in this case, no such procedure followed. Further, the petitioner's contention is that



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the Trial Court dismissed his complaint on the ground of limitation which is not proper. The Trial Court considered the statements, materials and thereafter given a well reasoned order while dismissing the complaint, finding no prima facie case is made out.

8.In view of the same, this Court finds no reason to interfere with the well reasoned order of the Trial Court. Accordingly, the Criminal Revision Petition stands dismissed.

22.12.2022

Speaking Order/Non Speaking Order
Index : Yes/No
Internet : Yes/No
cse

To

1.The Judicial Magistrate No.I,
Poonamallee

2.The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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