



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.03.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.1411 of 2022

and

Crl.M.P(MD)Nos.1050 & 1051 of 2022

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- 1.Pratheesh @ Prathish
- 2.Murugan @ Balamurugan
- 3.Nagarajan @ Nagarajan N
- 4.Durai @ Duraisamy

... Petitioners/Accused Nos.1 to 4

Vs.

- 1.State represented by,
The Inspector of Police,
Kottar Police Station,
Kanyakumari District.

(In Crime No.219 of 2016). ... 1st Respondent/Complainant

- 2.S.Sundar,
Head Constable,
Kottar Police Station,
Kanyakumari District.

... 2nd Respondent/
Defacto complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the charge sheet in C.C.No.51 of 2017 on the file of the learned Judicial Magistrate No.II, Nagercoil and quash the same in respect of the petitioners as illegal.

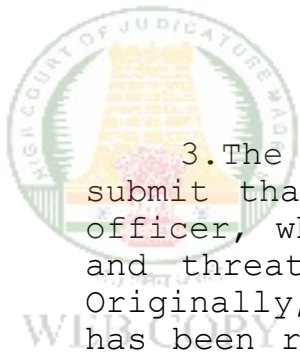
For Petitioners : Mr.G.Anto Prince

For R - 1 : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.51 of 2017 on the file of the learned Judicial Magistrate No.II, Nagercoil, as against the petitioners.

2.The case of the prosecution is that on 29.03.2016, when the second respondent, who was serving as Head Constable along with one Home Guard were on police patrol, at about 11.00 p.m., at Pataslayanvilai Junction, the accused persons had restrained and abused the defacto complainant and thereby threatened him with dire consequences. Further, they also restrained him from discharging their official duty.



3.The learned counsel appearing for the petitioners would submit that it is not at all possible to believe that the police officer, who was accompanied by a Home Guard, was abused, assaulted and threatened with dire consequences that too in the junction. Originally, on the complaint lodged by the second respondent, a case has been registered in Crime No.219 of 2016 for the offences under Sections 294(b), 383, 353 and 506(ii) of I.P.C. Subsequently, after completion of investigation filed final report for the offences under Sections 294(b), 353 and 506(ii) of I.P.C. He further submitted that no offence is made out as against the petitioner, since no ingredients are available to attract the same. In support of his contention, he also relied upon various Judgments.

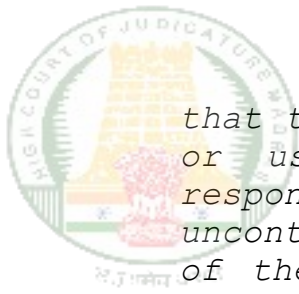
4.Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the first respondent.

5.On a perusal of the statement recorded under Section 161(3) of Cr.P.C and the charge-sheet filed as against the petitioners revealed that they were charged for the offences under Sections 294 (b), 353 and 506(ii) of I.P.C.

6.Insofar as the offence under Section 353 of I.P.C is concerned, the essential ingredients to attract the offence under Section 353 of I.P.C are that the person accused of the said charge should have assaulted the public servant or used criminal force with intent to prevent or deter the public servant from discharging his duty as public servant. On a perusal of the entire materials produced along with the charge-sheet, it appears that no force was used by the petitioners to commit such an offence. That apart, there is absolutely nothing on record to show that the petitioners either assaulted the second respondent or used criminal force to prevent that the second respondent from discharging his official duty. Therefore, the ingredients of the offence under Section 353 of I.P.C are not made out.

7.The Honourable Apex Court in the case of **Manik Taneja and another Vs. State of Karnataka and another** reported in **2015 (7) SCC 423**, held as follows:-

"A reading of the above provision shows that the essential ingredients to attract the offence under Section 353 of I.P.C are that the person accused of the said charge should have assaulted the public servant or used criminal force with intent to prevent or deter the public servant from discharging his duty as public servant. By perusing the materials available on record, it appears that no force was used by the appellants to commit such an offence. There is absolutely nothing on record to show



that the appellants either assaulted the second respondent or used criminal force to prevent that the second respondent from discharging his official duty. Taking the uncontroverted allegations, in our view, the ingredients of the offence under Section 353 of I.P.C are not made out".

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8.Insofar as the offence under Section 294(b) of I.P.C is concerned, the essential ingredients that intended to prevent obscene acts being performed in public to the annoyance of the public at large. Annoyance to others is an essential ingredient to the offence under the Section. On a perusal of the materials produced by the prosecution, there are no traces for attributing the annoyance to others. That apart, there is no statement that the alleged act caused annoyance to others. Hence, there is no allegation to attract the offence under Section 294(b) of I.P.C.

9.It is relevant to rely upon the judgment of this Court reported in **1996(1) CTC 470** in the case of **K.Jeyaramanuj 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 the allegations are frivolous in nature and the petitioner need not go for ordeal of trial.

10.Insofar as the offence under Section 506(ii) of I.P.C is concerned, the prosecution is to prove that threatening a person with any injury, to his person, reputation or property, to the person or reputation of any one in whom that person is interested, the threat must be with intent, to cause alarm to that person, to cause that person to do any act which he is not legally bound to do so the means of avoiding the execution of such threat and to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat.

11.It is relevant to rely upon the Judgment of the Allahabad High Court in the case of **Chandra Shekhar Singh and others Vs. State of Uttar Pradesh and others** reported in **Manu/UP/4155/2017**, wherein the Allahabad High Court has held as follows:-

"It has been consistently held by the Honourable Apex Court and also by various High Court that before an offence under this Section is made out, it must be established that the accused had an intention to cause



an alarm to the complainant. In order to attract the ingredients of Section 506 of I.P.C, the intention of the accused must be to cause alarm to the victim. Mere expression of words without any intention to cause alarm would not suffice. Mere vague and bald allegations that the accused threatened the victim with dire consequences is not sufficient to attract the provisions under Section 506 I.P.C. The threat should be a real one and not just a mere word when the person uttering does not exactly mean what he says and also when the person against whom the threat is launched, does not feel threatened actually. It should appear that the complainant was feeling for his life."

12.In the case on hand, there is no sufficient ingredients to attract the offence under Section 506(ii) of I.P.C, except the vague and bald allegations of criminal intimidation. The entire allegations are nothing but abuse of process of law.

13.In view of the above discussions, this Criminal Original Petition is allowed and the proceedings in C.C.No.51 of 2017 on the file of the learned Judicial Magistrate No.II, Nagercoil, is quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Writs)

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Sub Assistant Registrar(CS)

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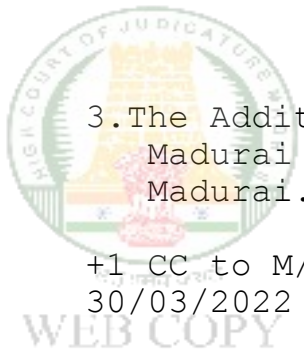
Note :

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1.The Judicial Magistrate No.II,
Nagercoil.

2.The Inspector of Police,
Kottar Police Station,
Kanyakumari District.



3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.ANTO PRINCE, Advocate (SR-15393[F] dated
30/03/2022)

CrI.O.P(MD)No.1411 of 2022
29.03.2022

RK(12/04/2022) 5P 5C