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Crl.O.P.(MD)No.1642 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.1642 of 2019

and

Crl.MP(MD)No.848 of 2019

Devaki

... Petitioner/A1

Vs.

1.The Inspector of Police,
Thanjavur Medical College Police Station,
Thanjavur,
(Crime No.514 of 2018)

... R1/Complainant

2.P.Nathan

... R2/De-facto complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records relating to the case in Crime No.514 of 2018 on the file of the Thanjavur Medical College Police Station, Thanjavur and cushy the same.

For Petitioner : Mr.K.Guhan

For 1st Respondent : Mr.B.Nambi Selvan
Additional Public Prosecutor

For 2nd Respondent : Mr.Kathiresa Perumal
(Legal Aid Counsel)

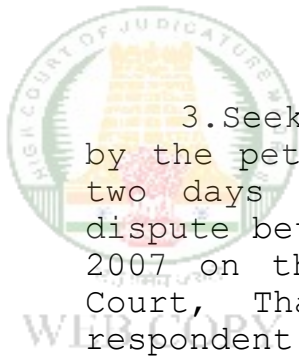
O R D E R

This criminal original petition is filed seeking quashment of the case in Crime No.514 of 2018 on the file of the Thanjavur Medical College Police Station, Thanjavur.

2.The case of the prosecution in brief:-

The de-facto complainant, who is the second respondent herein lodged a complaint with the following allegations:- He purchased the property measuring 1320 sq. feet from Tamil Nadu Housing Board. When he visited the property, on 12/11/2008 at about 10.00 am, the property was found occupied illegally by one Devika. Joining hands with identified persons, started abusing him in filthy language and criminally intimidated. On the basis of the complaint given by the de-facto complainant, a case in Crime No.514 of 2018 for the offences under sections 442, 294(b) and 506(i) IPC was registered against the accused persons.

<https://hcservices.ecourts.gov.in/hcservices/>



3. Seeking quashment of the same, this petition has been filed by the petitioner/A1 solely on the ground that there is a delay of two days in preferring the complaint and it is purely a civil dispute between the parties, since she filed a suit in O.S No.126 of 2007 on the file of the Additional District Judge-cum-Fast Track Court, Thanjavur, for specific performance against the second respondent herein and that was dismissed. Against which, A.S No.242 of 2009 was filed before this court and the same is pending. Pending the above said civil proceedings, this false complaint stated to be filed. According to the petitioner, even as per the allegation made in the FIR, the offences under sections 442, 294(b) and 506(i) IPC do not attract against her.

4. Heard both sides.

5. During the course of argument, in spite of notice has been repeatedly sent to the second respondent, it could not be served. So this court, by order, dated 02/03/2022 appointed one Mr.Kathiresa Perumal, as Legal Aid Counsel for the second respondent to assist the case. Upon which also, the matter was heard. It is further submitted by the learned counsel appearing for the petitioner, at the time of argument that even though, O.S No.126 of 2007, which was filed by the petitioner was dismissed by the Additional District Judge, Thanjavur, she filed Appeal in A.S No.242 of 2009 before this court and that was also dismissed for default. Later, he filed a petition to restore the suit. It is also submitted that in the meantime, the matter has been compromised between the petitioner and the 2nd respondent as per the information furnished by the advocate on record before the trial court.

6. As per the allegations made in the FIR, the offence said to have been taken place, on 14/11/2018. It appears that even after a lapse of three years, the investigation has not been completed and final report has not been filed before the concerned court. Even though counter has been filed by the respondent police and the copy of the final report has been circulated before this court, it has not been presented before the concerned court, probably because of the stay order that has been passed by this court for filing the final report, by order, dated 01/02/2019. So the question of limitation may not arise.

7. As per the draft final report, the petitioner alleged to have committed the offence under sections 442, 294(b) and 506(i) IPC.

8. Now let us go back to the complaint, wherein it has been simply mentioned that on the particular date of occurrence, when he visited the property, this petitioner along with three identified persons, abused him in filthy language. They also stated to have criminally intimidated him.

<https://hcservices.e-governance.gov.in/hcservice> 294(b) IPC reads as follows:-



"(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."

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10. In the facts and circumstances of the case and in the light of the allegation made in the FIR, it is seen that section 294(b) IPC may not be attracted. No-where it has been stated that the petitioner abused the de-facto complainant in filthy language in the public place or in the eye of public, after annoyance of the neighbours. Absolutely, there is no averment.

11. Similarly with regard to section 506(i) IPC, only bald allegation has been made to the effect that he was criminally intimidated.

12. Section 503 IPC reads as follows:-

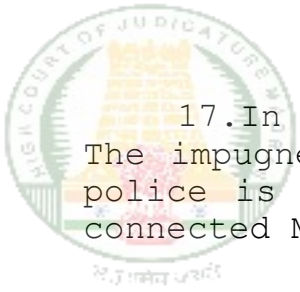
"503-Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation."

13. Time and again, it has been held by this court through various judgments, mere utterance of words are not sufficient to attract the ingredients of section 503 IPC and the threat must be a real one and the threat caused fear of death in the mind. Absolutely, there is no such averment in the complaint.

14. Another factual aspect is that the petitioner is about 73 years old lady and the de-facto complainant also aged about 69 years. Considering the advance age of the petitioner, I am of the considered view that the allegation made against the petitioner is exaggerated one and in the light of the pending of the civil suit, such a complaint has been given.

15. With regard to section 442 IPC also, in whose possession, the property was available, no material has been collected during the course of investigation. The documents with regard to the suit are also not available.

16. In the light of the above said development and the alleged compromise between the second respondent and the petitioner as well as the factual issue, I am of the considered view that the petitioner need not be subjected to undergo the trial process.



17.In the result, this criminal original petition is **allowed**. The impugned Crime No.514 of 2018 on the file of the 1st respondent police is hereby quashed as against this petitioner. Consequently, connected Miscellaneous Petition is closed.

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Sd/-

Assistant Registrar(AS)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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 Inspector of Police,
Thanjavur Medical College Hospital Police Station,
Thanjavur.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.1642 of 2019

Date:07/04/2022

SA(06.06.2022) 4P 3C