



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Reserved on : 21.12.2021
Delivered on : 11.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.2175 of 2019

and

Crl.M.P.(MD)Nos.1148 & 1149 of 2019

WEB COPY

1.Manu
2.Nishanth
3.Siva Ananth

... Petitioners/
Accused Nos.1 to 3

vs.

1.State represented by
The Inspector of Police,
Nithiravillai Police Station,
Kanyakumari District.
in Crime No.184 of 2018.

... Respondent/Complainant

2.P.Sasikumar

... Respondent/Defacto
Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records in S.T.C.No.203 of 2018 on the file of the Judicial Magistrate, Kuzhithurai, Kanyakumari District and quash the same.

For Petitioners : Mr.V.Kathirvelu, Senior Counsel
for Mr.K.PRABHU, Advocate

For Respondents : Mr.R.Sivakumar,
Government Advocate (Crl. side) for R1
Mr.S.C.HEROLD SINGH, Advocate for R2

O R D E R

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records in S.T.C.No.203 of 2018 pending on the file of the Judicial Magistrate Court, Kuzhithurai, Kanyakumari District, and quash the same.

2.The petitioners are the accused in S.T.C.No.203 of 2018 on the file of the Judicial Magistrate Court, Kuzhithurai, Kanyakumari District.



3.On the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No.184 of 2018 against four persons including the petitioners herein for the alleged offences under Sections 448, 294(b) and 506(1) IPC.

4.The first respondent, after completing the investigation, has laid the final report under Section 173 Cr.P.C. dated 09.09.2018 against the petitioners herein for the alleged offences under Sections 448 and 294(b) IPC and the case was taken on file in S.T.C.No.203 of 2018 and the same is pending on the file of the Court of the Judicial Magistrate, Kuzhithurai.

5.The case of the prosecution is that on 02.09.2018 at about 11.30 a.m., when the second respondent and his family members were offering prayers in the house of the second respondent, the petitioners/accused, due to their previous enmity, have trespassed into the house of the second respondent and abused the second respondent in filthy language for conducting prayers therein.

6.The case of the petitioners is that they were managing the Sri Maha Nagaraja temple, that the house of the second respondent is situated nearby the said temple, that the second respondent along with the outsiders were offering prayers in his house and thereby, caused annoyance and disturbance to the neighbors, that though the second respondent was not permitted to convert his house as the place of worship, he has been treating the house as place of worship and is offering prayers continuously.

7.The learned counsel for the petitioners, through additional type set, has produced the three circulars issued by the District Collector of Kanyakumari District dated 15.12.2005, 22.04.2010 and 18.08.1982.

8.As rightly pointed out by the learned counsel for the petitioners, in circular, dated 18.08.1982, the District Collector has directed all the local bodies to ensure that prior permission of the Collector is to be obtained before granting license to a place of worship, which should not be ordinarily within 1 km of the place of worship, of another religious group. In the circular, dated 22.04.2010, the District Collector has called upon all the Village Administrative Officer (VAO) / Revenue Administrative Officer / Executive Officer of Panchayat to inform to the Tahsildar / Revenue Divisional Officer about the construction of new place of worship without permission and in adjoining places.

9.It is also not in dispute that the second respondent has filed a writ petition in W.P.(MD)No.23705 of 2018 under Article 226 of the Constitution of India, seeking a Writ of Mandamus, forbearing the police officials from disturbing the prayer meeting of the petitioner being held at the house of the petitioner bearing Door No.8-138 C, Aarudesam Village, Kanyakumari District by considering the representation of the petitioner dated 17.10.2018. This Court,



petitioner therein that the Constitution provides for a fundamental right and mandates that all persons are equally entitled to freedom of conscience and their right to freely profess, practice and propagate their religion, has granted the relief by giving directions to the Inspector of Police not to interfere with the right of the petitioner and the neighbors belonging to his community from offering prayer at the residence of the petitioner. Moreover, this Court has also directed the second respondent herein to ensure that his prayer does not in any way cause any hindrance to the general public and does not in any way give rise to any law and order problem and if any law and order problem is created, then certainly, the police officials are at liberty to take appropriate action.

10.No doubt, as rightly pointed out by the learned counsel for the petitioners, the petitioners are not parties to the above writ petition. Moreover, the second respondent, in his complaint as well as in his statement under Section 161 Cr.P.C., has specifically stated that there existed some disputes regarding the conducting of prayers in his house and the complaint came to be registered against the both the parties in Nithiravillai Police Station and that subsequently, the enquiry is pending before the Revenue Divisional Officer (RDO), Vengavilai.

11.Considering the above, it is very much clear that there existed disputes and consequent previous enmity between the parties.

12.Now turning to the offence under Section 294(b), it is the specific case of the prosecution that the petitioners/accused had abused the second respondent in filthy words for conducting the prayers in the house of the second respondent. The ingredients of Section 294(b) are that the offender has done any obscene act in any public place or has sung, recited or uttered any obscene song or word in or near any public place and that he has so caused annoyance to others. In order to attract the offence under Section 294 IPC, the prosecution has to prove that the incident must have occurred in a public place. Moreover, mere using of abusive words or humiliating words or defamatory words will not amount to obscenity and that the prosecution has to show that the words must be in a sense lascivious or it must be appeal to the prurient interest, or will deprave and corrupt persons.

13.In the case on hand, it is the specific case of the prosecution that when the defacto complainant and his family members were offering prayers, the petitioners/accused had trespassing into the defacto complainant's house and abused him in filthy words.

14.According to the prosecution, the incident was only occurred in the house of the second respondent and more particularly inside the house of the second respondent.

15.As rightly contended by the learned counsel for the
<https://hccservices.com.in/hccservices> through the second respondent has alleged that the



petitioners had abused him in filthy language, he has not elaborated anything further.

16.Admittedly, the second respondent or his family members have not stated anything about the abusing or filthy words allegedly uttered by the petitioners. Even assuming for argument sake that the petitioners had abused the defacto complainant with filthy or obscene words, it is not their case that some other persons were there at that time and that the alleged words had caused annoyance to them.

17.Now coming to the offence under Section 448 IPC, as rightly contended by the learned counsel for the petitioners, except the second respondent and his family members, no other witness has been examined and no material was produced by the prosecution to show that the petitioners had committed the alleged offence under Section 448 IPC. As rightly pointed out by the learned counsel for the petitioner, there is absolutely no materials available to proceed against the petitioners for the alleged offence under Section 448 IPC.

18.In the absence of any materials to connect the petitioners with the alleged offences, permitting the prosecution to proceed with the case would only amount to an abuse of process of law and as such, the pending proceedings against the petitioners are liable to be quashed.

19.In the result, this Criminal Original Petition is allowed and the proceedings in S.T.C.No.203 of 2018 pending on the file of the Judicial Magistrate, Kuzhithurai, are quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (CS-III)

// 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 Judicial Magistrate,
Kuzhithurai.

2.Do Through the Chief Judicial Magistrate,
Kanyakumari District at Nagercoil.

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



3.The Inspector of Police,
Nithiravillai Police Station,
Kanyakumari District.

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

+1 cc to Mr.K.PRABHU, Advocate, SR.No.6088

+1 cc to Mr.S.C.HEROLD SINGH, Advocate, SR.No.5821

Pre-delivery order made in
Crl.O.P. (MD)No.2175 of 2019
and
Crl.M.P. (MD)Nos.1148 & 1149 of 2019
11.02.2022

SA (25.02.2022) 5P 7c