



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 05.01.2022

Pronounced on : 16.02.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

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CRL.O.P. (MD).No.291 of 2019

and

CRL.M.P (MD) Nos.129 and 130 of 2019

1.Elaiyaraja

2.Esakkiammal

: Petitioners /A1 & A2

Vs.

1.State rep.by

The Sub-Inspector of Police,
Panakudi Police Station,
Tirunelveli District.

: Respondent No.1/Complainant

2.Shanmugakani

: Respondent/Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to the charge sheet dated 29.02.2012 in C.C.No.379 of 2017 on the file of the learned Judicial Magistrate Court, Vallioor, Tirunelveli District, which was filed against the petitioners and quash the same as illegal.

For Petitioners : Mr.V.Rajiv Rufus

For Respondents : Mr.R.Sivakumar,
Government Advocate (Criminal Side),
for R1.

: No Appearance, for R2.

ORDER

The Criminal Original Petition has been filed, invoking Section 482 of Code of Criminal Procedure, seeking orders to call for the records pertaining to the case in C.C.No.379 of 2017 on the file of the Judicial Magistrate Court, Vallioor, Tirunelveli District and quash the same.

2. The petitioners are accused Nos.1 and 2 in C.C.No.379 of 2017 on the file of the Judicial Magistrate Court, Vallioor, Tirunelveli District. On the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No.89 of 2012 on 23.02.2012 against the petitioners for the alleged offence under Sections 294(b), 506(ii) IPC and Section 4 of Tamil Nadu Prohibition of Women Harassment Act.



3.The first respondent, after completing the investigation has laid the final report under Section 173 Cr.P.C, dated 29.02.2012 against the petitioners for the very same offences under Sections 294(b), 506(ii) IPC and Section 4 of Tamil Nadu Prohibition of Women Harassment Act and the case was taken on file in C.C.No.379 of 2017 and the same is pending on the file of the Judicial Magistrate Court, Vallioor.

4. The case of the prosecution is that there existed previous enmity between the defacto complainant and the second petitioner/second accused and due to that, on 22.02.2012 at about 11.00 hours, when the defacto complainant was standing in front of her house, the petitioners had abused the defacto complainant with filthy words, that the first accused had attacked her by pulling her saree and both of them had threatened her with dire consequences, if she claim again that her chain was stolen by the petitioners.

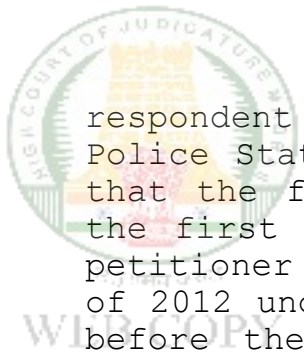
5.The learned counsel for the petitioners would submit that the present case is nothing but, an arm twist attempt made by the first respondent police and that since the petitioners had made complaints against the Police officials attached to the first respondent, they had slammed the above case, falsely implicating the petitioners.

6.As rightly pointed out by the learned counsel for the petitioners, it is evident from the complaint lodged by the second respondent that the second respondent had lodged a complaint with the first respondent alleging that her gold chain was found missing and suspected the involvement of the petitioners.

7.It is not the case of the first respondent or the second respondent that FIR came to be registered on the complaint lodged by the complainant/second respondent with regard to the missing of her gold chain.

8.The case of the petitioners is that the first respondent Police had directed the petitioners to appear before them for enquiry, that the petitioners in pursuance of the said directions had appeared before the first respondent on 16.01.2012 and 17.01.2013 and that after elaborate enquiry, they came to the conclusion that the petitioners were not involved in the alleged occurrence, they had permitted the petitioners to leave the Police Station.

9. It is the further case of the petitioners that since there was no subsequent development and clue with respect to the alleged theft of gold chain, the respondents conspired against the petitioners and started to act against them with ulterior motive, that on 29.01.2012 when the first petitioner was standing near the Kavalkinaru junction along with his TATA ACE goods vehicle bearing



respondent came there and took the TATA ACE vehicle illegally to the Police Station without any reason and kept the same for many days, that the first respondent police had started to insist and compel the first petitioner to accept the guilt of theft, that the first petitioner with no other option filed a petition in Crl.M.P.No.1537 of 2012 under Section 457 of Cr.P.C, seeking release of his vehicle before the Court of the Judicial Magistrate, Vallioor, that the first respondent Police got angry and came to the petitioners' house at about 09.30 pm on 06.02.2012 scolded the second petitioner with filthy language and also snatched a cell phone from the second petitioner's hands, which belongs to her mother, that the second petitioner had made a complaint to the Superintendent of Police, Tirunelveli on 08.02.2012, but no action was taken and their mobile phone was not returned and that subsequently, on 14.02.2012, the learned Judicial Magistrate, Vallioor has passed an order for releasing the vehicle.

10.It is evident from the records that the first petitioner has filed a petition in Crl.M.P.No.1537 of 2012 under Section 457 Cr.P.C, seeking orders to release the vehicle bearing Registration No. TN 72 AX 9003, which was allegedly in the illegal custody of the first respondent. It is further evident that the first petitioner has also sent telegrams to the Chief Minister of Tamil Nadu, Chief Secretary, The District Collector of Tirunelveli and the Superintendent of Police Tirunelveli, seeking action against the first respondent Police for keeping his goods vehicle in their illegal custody. It is also further evident from the typed set of records that the second petitioner has sent representations to the Superintendent of Police, Tirunelveli narrating all the facts and also threatenings made by the first respondent Police that they would foist false case against the petitioner, her husband and the vehicle.

11.The petitioners' further case is that the first respondent Police got irritated against the complaints sent by the petitioners to the higher officials and others and decided to take vengeance against the petitioners, that on 23.02.2012 at about 01.30 am, the Police came to the petitioners' house and took the first petitioner to the Police Station saying that he would be enquired by the Inspector of Panakudi Police Station, that the first petitioner was tortured by using all kinds of third degree methods in the police station, that in the meanwhile, the second petitioner has filed a petition under Section 97 Cr.P.C, seeking the release of the first petitioner before the Judicial Magistrate Court, Vallioor and that the learned Magistrate himself had visited the Police Station and found that the first petitioner was kept in illegal custody.

12.It is evident from the records that the second petitioner has filed a petition under Section 97 Cr.P.C before the Court of the Judicial Magistrate, Vallioor in Cr.M.P.No.2596 of 2012 and the learned Magistrate has passed an order, dated 23.02.2012 disposing



the above petition. The learned Magistrate, on considering the second petitioner's affidavit and other records, got himself satisfied that there are sufficient grounds, which would disclose that the second petitioner's husband in illegal custody, the learned Magistrate visited the Panakudi Police Station and found that the first petitioner was available in the Police Station and on questioning, the first petitioner, informed that he was taken to the custody at about 01.30 am on 23.02.2012 and subjected to ill-treatment.

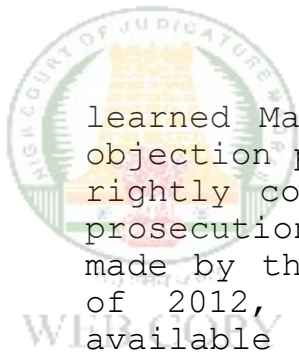
13.The learned Magistrate has further observed in the order that the Inspector of Police, Panakudi informed that he has brought the first petitioner to the Station on a complaint and the matter is under investigation and after hearing the same, that the learned Magistrate has then directed the Police to proceed in accordance with law, if any offence is made out, if not to set the victim at liberty and also directed the Inspector of Police to inform the action that would be taken.

14.It is pertinent to mention that when the learned Magistrate was in the Police Station, the first respondent has not informed the Magistrate that FIR was already registered and the first petitioner was taken into custody only for the purpose of investigation with respect to the said case. The learned Magistrate has also not stated in the order that the FIR registered against the petitioners was shown to him or that the records were shown for taking the first petitioner in to the custody and for keeping him in the custody. Whatever it is, it is pertinent to mention that for the offence alleged to have occurred at 23.00 hours i.e., 11.00 pm, on 22.02.2012, the Special Sub Inspector of Police, Panakudi Police Station by showing that the second respondent gave a complaint at 02.00 hours on 23.02.2012, registered the case in Crime No.89 of 2012 at about 02.00 hours on 23.02.2012.

15.It is evident from the records that the Sub-Inspector of Police by alleging that the first petitioner was arrested at 10.00 am on 23.02.2012 at south Perungudi Bus Stop and brought to the Station at 13.30 hours and that the second accused was found absconding, has produced the first petitioner before the learned Magistrate along with the remand report at 09.00 pm on 23.12.2012.

16.It is further evident that the learned Magistrate by observing that the accused was produced at 09.00 pm, that the accused has stated that he has been taken into custody at 01.30 am on 23.12.2012 and also complained of ill-treatment, remanded the first accused to judicial custody.

17.It is not in dispute that the first accused was released on bail by the learned Magistrate on the next day. As rightly pointed out by the learned counsel for the petitioners, though the



learned Magistrate in the remand order has specifically noted the objection petition filed by the second petitioner/second accused. As rightly contended by the learned counsel for the petitioners, the prosecution has not specifically disputed or denied the observation made by the learned Magistrate in the order passed in CrI.M.P.2596 of 2012, that the first petitioner/1st accused was very much available in the Police Station and the first accused had informed that he was taken into custody at 01.30 am on 23.02.2012.

18. One other important point to be noted is, as rightly pointed out by the learned counsel for the petitioners, the Investigating Officer had allegedly visited the occurrence place at 03.00 hours on 23.02.2012 within one hour, since the registration of the FIR and prepared the observation mahazar and rough sketch. Admittedly, the case was registered for the offence under Sections 294(b), 506(ii) IPC and Section 4 of TNPWH Act. Admittedly, no one was injured in this incident.

19. A bare perusal of the complaint would only suggest that the offence alleged against the petitioners are not serious in nature. Considering the above, this Court is at loss to understand the urgency or the emergency for the investigating officer to visit the occurrence place at odd hours i.e., 03.00 am on 23.02.2012 within one hour, since the registration of FIR and to prepare the observation mahazar and rough sketch with the help of torch light and the lamp post. As rightly contended by the learned counsel for the petitioners, the charge sheet was dated 29.02.2012, but admittedly, charge sheet was filed before the jurisdictional Court on 26.09.2017, after the lapse of more than 5 years, since the date of charge sheet.

20. No doubt, Section 468 of Cr.P.C has no application to the hand, but at the same time, when the entire investigation was completed on 23.02.2012 itself, the first respondent has not offered any reason or explanation for keeping the charge sheet in their hands for more than 5 years. More over, at this stage, this Court is not required to go into the statements recorded under Section 161 (3) Cr.P.C in depth. But, considering the sequence of events narrated by the petitioners, it is necessary to look into the material contradiction pointed out by the defence.

21. According to the prosecution, the alleged incident was occurred at 11.00 pm, on 22.02.2012 and they have shown two witnesses Perumal and Banumathi as occurrence witnesses.

22. As rightly pointed out by the learned counsel for the petitioners, though the defacto complainant in her statement under Section 161(3) Cr.P.C has reiterated the version of the prosecution that the incident was occurred at 11.00 pm on 22.02.2012, the other two eye witnesses Banumathi and Perumal in their statement under Section 161(3) Cr.P.C have stated that the occurrence was held at 11.00 am on 22.02.2012. The investigating officer has not offered



23. Considering the entire facts and circumstances of the case and also the sequence of events narrated above, it can easily be inferred that the first respondent, irked by the complaints and the proceedings initiated by the petitioners, had filed the present case and would clearly probablize the theory put forth by the petitioners.

24. It is the case of the prosecution that since the first petitioner had dragged the saree of the defacto complainant, they have invoked Section 4 of Women Harassment Act. A perusal of the complaint and the statements of the witnesses would only suggest that the first petitioner had attempted to pull the saree of the defacto complainant and that she immediately went inside her house.

25. Regarding the offence under Section 294(b) IPC, it is settled law that mere utterance of abusive words or humiliating words or defamatory words will not, as such, amount to obscenity as envisaged in Section 292 and 294 (b) IPC and that to make it punishable under Section 294(b), the alleged words must be in a sense lascivious, or it must be appeal to the prurient interest, or will deprave and corrupt persons.

26. Moreover, mere utterance of obscene words are not sufficient and there must be a further proof to establish that it was to the annoyance of others. In the case on hand, admittedly, the petitioners have not uttered any words, coming under the definition of obscenity and even assuming for argument sake, that they have uttered the obscene words, there is absolutely no material to show that the same caused annoyance to the others.

27. Now turning to the offence under Section 506(ii) IPC, it is also settled law that the threat must be with an intention to cause alarm to the complainant to cause that person to do or omit to do any work and mere expression of any words without any intention of causing alarm would not be sufficient to bring within the ambit of this section. In the case on hand, as rightly pointed out by the learned counsel for the petitioners, the prosecution has not placed any material to show that the intention of the petitioners was to cause alarm to the complainant and that actually the defacto complainant, that on hearing the words of the petitioners was criminally intimidated.

28. Viewing from any angle, this Court has no hesitation to hold that the initiation of proceedings is clearly an abuse of process of law and permitting the prosecution to continue would only be against the interest of justice. Hence, this Court concludes that the impugned proceedings in C.C.No.379 of 2017 on the file of the learned Judicial Magistrate Court, Vallioor, Tirunelveli District, is liable to be quashed.



29.In the result, the Criminal Original Petition is allowed.
Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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/ /2022

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 Court, Vallioor,
Tirunelveli District.
- 2.The Sub-Inspector of Police,
Panakudi Police Station,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CRL.O.P. (MD) .No.291 of 2019

and

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16.02.2022

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