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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.01.2022

Pronounced on : 25.01.2022

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CRL.O.P. (MD) .No.3954 of 2019

and

CRL.M.P (MD) No.2332 of 2019

M.Selvam : Petitioner/Sole Accused
Vs.

1.State of Tamil Nadu represented by

The Sub Inspector of Police,
Alagapappuram Police Station,
Alagapappuram,
Karaikudi, Sivagangai District.
(Crime No.198 of 2013.)

: 1st Respondent/ Complainant

2.KR.Arumugam : 2nd Respondent/Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to C.C.No.147 of 2015 in Crime No.198 of 2013 on the file of the learned Judicial Magistrate, Karaikudi and quash the same.

For Petitioner : Mr.R.Sundar Srinivasan

For Respondents : Mr.R.Sivakumar,

Government Advocate (Criminal Side), for R1.

ORDER

The Criminal Original Petition is filed, invoking Section 482 of Cr.PC., seeking orders to call for the records pertaining to C.C.No.147 of 2015 pending on the file of the Judicial Magistrate Court, Karaikudi and quash the same.

2.The petitioner is the sole accused in C.C.No.147 of 2015 on the file of the Judicial Magistrate Court, Karaikudi. On the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No.932 of 2013 on the file of the Karaikudi Police Station, for the offences under Sections 294(b) and 506(1) IPC, against the petitioner. Subsequently, on the point of jurisdiction, the case was transferred to the file of the Alagapappuram Police Station and the case was registered in Crime No.198 of 2013 for the same offences.

3.The first respondent, after completing the investigation, has laid the final report against the petitioner for the offences under Sections 294(b) and 506(1) IPC and the case was taken on file in C.C.No.147 of 2015 and is pending on the file of the Court of the Judicial Magistrate, Karaikudi.



4.It is not in dispute that the petitioner has previously filed a petition in Crl.OP(MD)No.15417 of 2014, for quashing the FIR and this Court has passed an order granting interim stay, but the first respondent has filed the final report and as already pointed out, the learned Magistrate has taken cognizance of the case.

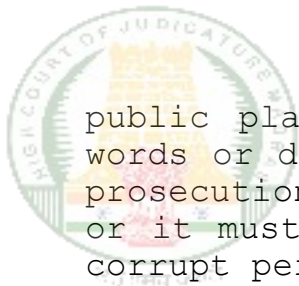
5.It is also not in dispute that thereafter, the petitioner has filed the present petition seeking quashment of the charge sheet filed in C.C.No.147 of 2015.

6.It is pertinent to mention that when the matter was taken up for hearing before this Court on 22.11.2021, the learned Additional Public Prosecutor submitted that the first witness has been examined and cross examined on 25.03.2019 itself, that interim stay has been granted on 18.03.2019 and that the order copy would not have reached the trial Court before the cross examination of the witness. Whatever it is, now coming to the merits of the case, the first respondent has laid the final report describing the charge very briefly, that on 23.09.2013 at about 10.57 am, the accused had abused the defacto complainant and threatened with dire consequences through cell phone.

7.As rightly pointed out by the learned counsel for the petitioner, in the complaint as well as in the statement, the defacto complainant has alleged that on 23.09.2013 at about 10.57 am, when the defacto complainant was standing on Illuppakudi Road and in front of Shanmugam Meenal Marriage Hall along with Auto driver Muthiah and one Subramanian and was chatting with them, he received a call from cell phone No.95787 81189 and the caller had introduced himself as SPD Karuppaiah, and directed the complainant not to depose evidence in favour of Baludevar and abused him in filthy language and also threatened him with dire consequences, that suspecting the voice of the said SPD Karuppaiah, he immediately contacted the said Karuppaiah and confirmed that the said Karuppaiah was not the caller and that subsequently, he came to know that the petitioner, who is a Siddha Doctor had called him and abused and threatened with dire consequences.

8.As rightly contended by the learned counsel for the petitioner, two witnesses allegedly present along with the defacto complainant at the occurrence place in their statements, have not alleged the way in which the petitioner was abused and was threatened with dire consequences.

9.As already pointed out, the case on hand relates to the offences under Sections 294(b) and 506(1) IPC. 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 petitioner has to prove that the incident must occurred in a



public place. Moreover, near using of abusive words or humiliated 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.

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10. In the case on hand, no doubt, as already pointed out, the defacto complainant was standing in the road at that time, but even according to the prosecution, the petitioner has allegedly called the defacto complainant through cell phone and abused him through cell phone.

11. As already pointed out, even the witnesses, who were allegedly present at the occurrence place have not specified the obscene words used by the petitioner. As rightly contended by the learned counsel for the petitioner, even assuming that the petitioner had abused the defacto complainant with obscene words, since the same was not heard by anybody including the witnesses, who were standing nearby the defacto complainant at the occurrence place, the question of causing annoyance to others does not arise at all.

12. Now turning to the next offence under Section 506(1) IPC, the prosecution has to show that the threat given by the accused is real and substantial. At this juncture, it is necessary to refer the decision of the Hon'ble Supreme Court in **Manik Taneja and another vs. State of Karnataka and another** reported in (2015) 7 SCC 423 and the relevant passages are extracted hereunder:-

"11. Section 506 IPC prescribes punishment for the offence of criminal intimidation. "Criminal intimidation" as defined in Section 503 IPC is as under:-

"503. Criminal Intimidation.- 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.

Explanation.- A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section."

A reading of the definition of "Criminal intimidation" would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act



which he is not legally bound to do or omit to do an act which he is legally entitled to do.

12. In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of "Criminal intimidation". The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the minds of the second respondent causing obstruction in discharge of his duty. As far as the comments posted on the Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of appellants posting a comment on the Facebook may not attract ingredients of criminal intimidation in Section 503 IPC."

13. In the case on hand, the prosecution has not shown any material that the petitioner has caused criminal intimidation. It is not the case of the defacto complainant that after hearing the alleged threatening made by the petitioner, he was criminally intimidated. Considering the above, this Court is of the view that permitting the prosecution to continue the proceedings in C.C.No.147 of 2015 is not warranted and as such, the proceedings in C.C.No.147 of 2015 on the file of the Judicial Magistrate Court, Karaikudi are liable to be quashed.

14. In the result, the Criminal Original Petition is allowed and the proceedings in C.C.No.147 of 2015 on the file of the learned Judicial Magistrate, Karaikudi are quashed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

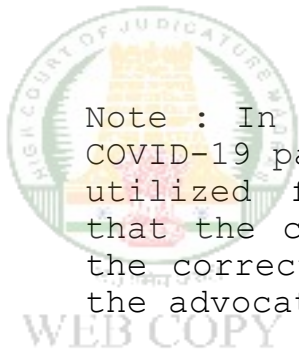
Assistant Registrar (AD-II)

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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, Karaikudi.
- 2.The Sub Inspector of Police,
Alagapappuram Police Station,
Alagapappuram, Karaikudi,
Sivagangai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery order made in
CRL.O.P.(MD).No.3954 of 2019
and
CRL.M.P(MD)No.2332 of 2019
25.01.2022

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