



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:28/03/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

CrI.O.P.(MD)No.5509 of 2019

and

CrI.MP(MD)Nos.3464 and 3465 of 2019

WEB COPY

A.Soundarapandi : Petitioner/Accused No.9

Vs.

T.Senthilkumar : Respondent/Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in CC No.5 of 2019 on the file of the Judicial Magistrate, Additional Mahila Court, Madurai and quash the same.

For Petitioner : Mr.N.Ananthapadmanaban
for M/s.APN Law Associates
For Respondent : Mr.R.Muthurakkan

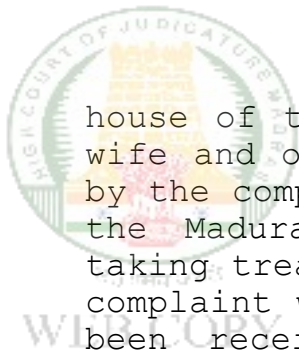
O R D E R

This criminal original petition is filed seeking quashment of CC No.5 of 2019 on the file of the Judicial Magistrate, Additional Mahila Court, Madurai.

2.The case of the respondent in brief:-

He filed a private complaint with the following allegations. He owns property in survey No.124/5 measuring about 366 sq. feet by way of purchase from the original owner. The accused persons with an intention to grab the property were making frequent trouble. on 13/12/2017 at about 1.30 pm, A1 to A6 came to the property and started to damage the wall. When that was questioned, the Accused 1 to 3 abused in filthy language and also criminally intimidated and also assaulted. In respect of the above said occurrence, on 13/12/2017, he lodged a complaint before the Chatirapatti police, who is the 9th accused. But he refused to receive the same. He made a petition before the Judicial Magistrate, Additional Mahila Court, Madurai, in CC No.5 of 2019 under section 156(3) Cr.P.C and as per the order of the court, there was no action taken by the police. So a suit in O.S.No.337 of 2017 was filed by him, in which an ex-parte interim injunction was granted.

3.Again on 26/12/2017, the accused persons with deadly weapons trespassed into the house of the de-facto complainant and made assault. In respect of which also, a complaint was given and it was taken in CSR No.146 of 2012. But no action was taken. Again on 14/06/2018 at about 1.00 pm, the accused 1 to 5 and 7 came to the



house of the complainant, abused in filthy language, assaulted his wife and outraged the modesty. When that was about to be prevented by the complainant, he was also assaulted. The wife was admitted in the Madurai Government Rajaji Hospital, on 19/08/2018. she was taking treatment till 23/08/2018. Even though, the statement of the complaint was given, no case was registered. But the complaint has been received from the second accused by the 9th accused and registered a case in Crime No.100 of 2018 against him. A wrong information has been given that the 2nd accused was discharged from the hospital. In spite of repeated request, no action was taken. With these allegations, he filed a private complaint stating that the accused persons committed the offences under sections 147, 148, 294(b), 323, 427, 448, 506(ii), 120(b)IPC and Section 4 of TN Prohibition of Women Harassment Act.

4. Seeking quashment of the same, this petition has been filed by the petitioner on the ground that no overtact has been attributed against him. Section 166 IPC is not at all attracted and since the petitioner is a public servant, as per the Tamil Nadu Police Standing Order Nos.63 and 64, no criminal prosecution can be instituted without sanction of the superior officer.

5. Heard both sides.

6. During the course of argument, the learned counsel appearing for the respondent would submit that the petitioner has failed to receive the complaint, that was given by the respondent to him. So he has committed the offence under section 166 IPC.

7. The learned counsel appearing for the petitioner would submit that even as per the allegation made in the complaint, the respondent has filed the petition by way of filing a petition under section 156(3) Cr.P.C before the Judicial Magistrate No.5, Madurai. Having availed such sort of remedy, the complaint that this petitioner refused to receive the complaint is not at all reliable and maintainable also.

8. Section 166 IPC reads as follows:-

"166. Public servant disobeying law, with intent to cause injury to any person—Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending to cause, or knowing it to be likely that he will, by such disobedience, cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both."

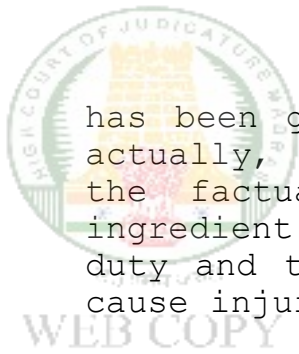


9.In the complaint, three occurrences are mentioned. The first occurrence took place on 10/12/2017, when survey was about to be undertaken by the accused persons with the assistance of the revenue officials. But here, the complaint was given which time was not clear on record.

10.The next occurrence is 16/12/2017, wherein the accused persons alleged to have caused damage to the compound wall. Even though, the complaint was given, it was also not taken into account and to whom the complaint was given is not available on record.

11.Again on 17/02/2017, the next occurrence has taken place. So in the occurrences, the complainant as well as his wife was stated to be assaulted. It has been stated by him that he lodged a complaint with one police constable available in the Chatirapatti police station. But other particulars are not available. There is no mention that the petitioner was available in the police station at that time and he failed to receive the complaint. Thereafter only, it appears that he availed the choice under section 156 of Cr.P.C. Later, he filed a suit also, wherein interim injunction was granted in O.S No.337 of 2017 on the file of the District Munsif Court, Melur. Subsequent to the above said interim injunction, another occurrence said to have been taken place on 26/02/2017. Against which also information was given to the Chatirapatti police station. but no action was taken. Setting out these facts, the respondent sent a complaint to the Inspector of Police, Chatirapatti police, on 26/12/2017. Nowhere stated by the respondent that this petitioner refused to take action in respect of the repeated complaints. In respect of the complaint, on 26/12/2017, it was registered in CSR No.142 of 2017 by the then Sub Inspector of Police Pethuraja. Again on the basis of the complaint on 13/08/2018, CSR No.6 of 2018 was registered and receipt was issued by their then SSI Karunakaran and that was undertaken in CSR No.6 of 2018 and both the parties were enquired and in the enquiry, both the parties have given statement that they will work out their remedy through civil process. On that ground, it was closed.

12.As mentioned earlier, on the date of the suit, he already filed the complaint and is pending before the Distrit Munsif, Melur. Thereafter only, CMP No.159 of 2018 was filed and direction was issued to the Inspector of Police, Chatripatti. Thereafter on 19/08/2018, the wife of the complaint also, sent a complaint to the Inspector of Police, Chatrapatti. So these sequence of events shows that continuous trouble between this private parties and because of that only, continuous complaints have also been given. So as mentioned earlier, in the previous complaint, nothing has been stated about this petitioner. The allegation against the petitioner is that without taking proper action on the basis of the complaint given by the respondent, the present complaint has been received from the 7th accused and the case was registered against the others in Crime No.100 of 2018 and wrong information



has been given that injured was discharged from the hospital. But actually, the wife of the respondent was taking treatment. So with the factual background, coming to section 166 IPC, the main ingredient is that there must be wrongful default from the official duty and there must be intention on the part of the petitioner to cause injury to the respondent.

13.As mentioned earlier, nowhere in the earlier complaint, it has been stated that only this petitioner refused to receive the complaint and take action by registering proper case. So even though, the question of sanction is raised in the petition, I am not going into the aspect in view of the factual position.

14.So I find that no material has been placed by the respondent before the trial court, implicating this petitioner to show his violation. So on that ground, this petition is liable to be allowed.

15.In the result, this criminal original petition is **allowed**. The impugned proceedings in CC No.5 of 2019 on the file of the Judicial Magistrate, Additional Mahila Court, Madurai is quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

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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,

The Judicial Magistrate,
Additional Mahila Court,
Madurai.

+1 CC to M/s.K.MUTHU RAKKAN, Advocate (SR-14956[F] dated 28/03/2022)

Crl.O.P. (MD)No.5509 of 2019

28/03/2022

NSN(CO)

GC(08.04.2022) 4P 3C

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