



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 04.02.2022
PRONOUNCED ON : 29.04.2022

CORAM

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

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Crl.O.P. (MD)No.7740 of 2019
and
Crl.M.P. (MD)Nos.4737 and 4738 of 2019

1.Alaguthangamani
2.Sivakumar
3.Senthil : Petitioners/Accused 1 to 3

Vs.

Saravanan : Respondent/Complainant

PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the entire records in C.C.No.89 of 2019, on the file of the learned Judicial Magistrate No.II, Kovilpatti and quash the same.

For Petitioners : Mr.P.Pethu Rajesh

For Respondent : Mr.A.Arun Prasad

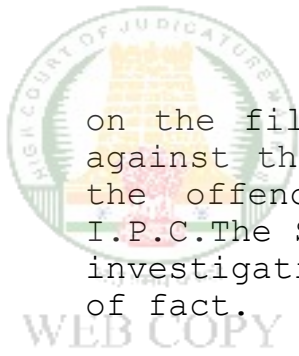
ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records in C.C.No.89 of 2019, pending on the file of the Judicial Magistrate Court No.II, Kovilpatti and quash the same.

2. The petitioners are the accused 1 to 3 in C.C.No.89 of 2019, on the file of the Judicial Magistrate Court No.II, Kovilpatti.

3. The case of the prosecution is that on 28.04.2015, when the respondent was in his place covered with asbestos sheet, the petitioner 1 and 2 came to that place, abused the complainant in filthy language, that the first petitioner had attempted to assault the respondent, and that despite the intervention of the complainant, the petitioners 1 and 2 damaged the asbestos sheet and iron poles and thereby caused damage to the tune of Rs.20,000/-.

4.Originally the respondent has filed a petition under Section 156(3) Cr.P.C., and the same was taken on file in Cr.M.P.No.4802 of 2015 and on the basis of the orders passed by the learned Judicial Magistrate in Cr.M.P.No.4802 of 2015, F.I.R., came to be registered



on the file of the Koppampatti Police Station in Cr.No.73 of 2015 against three persons including the petitioners 1 and 2 herein for the offences under Sections 447, 351, 294(b), 427 and 506(ii) I.P.C. The Sub-Inspector of Police, Koppampatti Police Station, after investigation, has filed a final report dated 07.06.2015 as mistake of fact.

5. It is evident from the records that the respondent, who was the defacto complainant therein, after receiving the notice, has appeared before the Magistrate Court and filed a memo to accept the final report with liberty to file a private complaint and on that basis, the F.I.R., was ordered to be closed as mistake of fact. Subsequently, the respondent has filed a private complaint under Section 200 Cr.P.C., against the petitioners herein and the same was taken on file in Cr.M.P.No.2913 of 2019. The learned Magistrate, after conducting enquiry under Section 202 Cr.P.C., has passed the impugned order dated 07.03.2019, taking cognizance of the case in C.C.No.89 of 2019 for the offences under Sections 447, 351, 294(b), 427, 506(ii) and 120(b) I.P.C., and ordered to issue summons to the accused under Section 204 Cr.P.C., Aggrieved by the said order of taking cognizance and issuance of process under Section 204 Cr.P.C., the accused therein by invoking Section 482 Cr.P.C., have filed the above petition seeking to quash the said case in C.C.No.89 of 2019.

6. The petitioners' case is that the land in New Natham Survey No.363/1 in Sembathur Village to an extent of 160 sq. meter was belonging to one Murugesha Pandian - father of the petitioners 1 and 2, that the said land was gifted by the said Murugesha Pandian to the first petitioner vide gift deed dated 01.12.2010, that the first petitioner has been enjoying the said land without any hindrance and that the respondent, by claiming right over the land to an extent of 81.6sq. meter in the said survey number by virtue of sale deed dated 29.05.2012, has attempted to disturb the peaceful possession of the first petitioner, that the vendor of the respondent Paulrathi realized the situation and executed a cancellation deed dated 30.01.2015 vide document No.300 of 2015 to cancel the sale deed, that though the said document was cancelled on 30.01.2015 itself, the respondent claimed a relief of declaration of his title based on the cancelled deed in O.S.No.21 of 2015, on the file of the District Munsif Court, Kovilpatti, that the petitioners 1 and 2 preferred a petition in I.A.No.123 of 2017 for rejecting the plaint for want of cause of action, that the said petition was dismissed and challenging the said order of dismissal, the petitioners 1 and 2 preferred a Civil Revision Petition in C.R.P.(MD)No.2518 of 2017 and an interim stay was granted in C.M.P.(MD)No.11810 of 2017, that in the meanwhile the petitioners 1 and 2 have also filed a suit in O.S.No.50 of 2015 praying for permanent injunction restraining the respondent from interfering with their peaceful possession.

7. The learned Counsel for the respondent would submit that the cancellation deed was executed by Paulrathi on 30.01.2015 and the



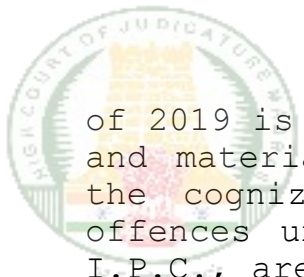
very same Paulrathi has executed another sale deed on 30.01.2015 itself and that therefore, the contention of the petitioners that the respondent has filed a suit for declaration of his title based on the cancelled deed, is incorrect.

8. No doubt, the respondent has produced the copies of the sale cancellation deed dated 30.01.2015 and a copy of the sale deed dated 30.01.2015 purchasing the very same property again. But as rightly contended by the learned Counsel for the petitioners, the respondent has not offered any reason or explanation as to why the sale deed was cancelled on 30.01.2015 and another sale deed was executed on the same date. It is evident from the records that neither the respondent nor his vendor has assigned any reason for cancelling the sale deed and for executing another sale deed on the same day with respect to the same property. Though the property is the same, in the second sale deed, they have mentioned additional particulars with regard to that property.

9. As already pointed out, the respondent has filed a suit in O.S.No.21 of 2015 to declare that the suit property therein was belonging to the respondent/defacto complainant and for permanent injunction restraining the defendant and their men from interfering with the respondent's peaceful possession and enjoyment of the property. It is also not in dispute that the first petitioner has also filed the suit in O.S.No.50 of 2015 for permanent injunction restraining the respondent and his men from interfering with the first petitioner's construction activities in the scheduled mentioned property.

10. Considering the above, it is clearly evident that there existed civil dispute between the parties. As already pointed out, both the petitioners 1 and 2 and the respondent have been claiming title and interest over the suit property in dispute and as rightly pointed out by the learned Counsel for the petitioners, it is for the competent civil Court to decide about the title of the parties to the property in question. Bearing this factual background in mind, let us proceed with the case.

11. The learned Counsel for the petitioners would submit that the order of accepting the negative final report filed under Section 173(8) Cr.P.C., after denouncing the option of protest petition holds a status of judicial order making an end to the accusation levelled in Crime No.73 of 2015, that the memo and the order of granting liberty to the defacto complainant to prefer the complaint under Section 200 Cr.P.C., is a procedural impropriety and the same Magistrate who accepted the materials and witnesses propounded by the Investigating Agency, cannot take an other view, while exercising his powers under Section 190(1)(a) Cr.P.C., when the same set of allegations transposed in the form changing the cover of pleading filed under Section 200 Cr.P.C. He would further submit that the order of taking cognizance by the Magistrate in C.C.No.89



of 2019 is bad in law, that since the pre-cognizance sworn statement and materials placed along with the complainant does not disclose the cognizable offence and that the ingredients of the alleged offences under Sections 447, 351, 294(b), 427, 506(ii) r/w 120(b) I.P.C., are not made out.

12. The main contention of the petitioners is that since the Magistrate has already passed an order accepting the negative report, he has no jurisdiction to take cognizance on the basis of the private complaint under Section 200 Cr.P.C., and that therefore, the order taking cognizance is bad in law and the same is liable to be set aside.

13. At this juncture, it is necessary to refer the three Judge Bench judgment of the Hon'ble Supreme Court in **Kishore Kumar Gyanchandani vs. G.D. Mehrotra And Another** reported in **AIR 2002 SC 483** and the Hon'ble Apex Court has specifically held that even if the Magistrate accepts the final report submitted by the Police, the right of the complainant to file a regular complaint is not taken away and the relevant portion is extracted hereunder:

"4. When the matter was listed before a two-Judge Bench of this Court, thinking that there is some divergence of views, it referred the matter to a three-Judge Bench. On examining the different provisions of the Code_of Criminal Procedure as well as the decisions of this Court relevant on the question, we see no divergence in the matter. It is too well settled that when police after investigation files a final form under Section 173 of the Code, the Magistrate may disagree with the conclusion arrived at by the police and take cognizance in exercise of power under Section 190 of the Code. The Magistrate may not take cognizance and direct further investigation in the matter under Section 156_of the Code. Where the Magistrate accepts the final form submitted by the police, the right of the complainant to file a regular complaint is not taken away and in fact on such a complaint being filed the Magistrate follows the procedure under Section 201_of the Code and takes cognizance if the materials produced by the complainant make out an offence. This question has been raised and answered by this Court in the case of *Gopal Vijay Verma V. Bhuneswar Prasad Sinha and Ors.*, whereunder the view of the Patna High Court to the contrary has been reversed. The Court in no uncertain terms in the aforesaid case has indicated that the acceptance of final form does not debar the Magistrate from taking cognizance on the basis of the materials produced in a complaint proceeding."

14. It is also necessary to refer the decision of the Hon'ble Supreme Court in **State of Rajasthan Vs. Aruna Devi and others** reported in **1995 SCC (1) 1**.



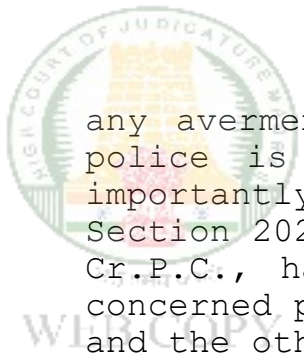
"3. A perusal of the impugned judgment of the High Court shows that it took the view that the Magistrate had no jurisdiction to take cognizance after the final report submitted by police had been once accepted. Shri Gupta, appearing for the appellant, contends that this view is erroneous in law inasmuch as Section 173(8) of the Code permits further investigation in respect of an offence after a report under sub-section (2) has been submitted. Sub-section (8) also visualises forwarding of another report to the Magistrate. Further investigation had thus legal sanction and if after such further investigation a report is submitted that an offence was committed, it would be open to the Magistrate to take cognizance of the same on his being satisfied in this regard.

4. Shri Francis for the respondents, however, contends that the order of the Magistrate taking cognizance pursuant to filing of further report amounted to entertaining second complaint which is not permissible in law. To substantiate the legal submission, we have been first referred to *Pramatha Nath Taluqdar v. Saro Ranjan Sarkar*, in which a three-Judge Bench of this Court dealt with this aspect. A perusal of the judgment of the majority shows that it took the view that dismissal of a complaint under Section 203 of the Code is no bar to the entertainment of a second complaint on the same facts; but the same could be done only in exceptional circumstances some of which have been illustrated in the judgment. Further observation in this regard is that a fresh complaint can be entertained, *inter alia*, when fresh evidence comes forward. In the present case, this is precisely what had happened, as on further investigation being made, fresh materials came to light which led to the filing of further report stating that a case had been made out."

15. Considering the above, the position of law is well settled that as per the Code of Criminal Procedure, the defacto complainant is entitled to file a private complaint even if the case is lodged with the police is referred or closed. The right of the defacto complainant to proceed with his complaint, even after the acceptance of the negative report of the police by the Judicial Magistrate is very much available.

16. Considering the above, the contention of the learned Counsel for the petitioners that since the learned Magistrate has already accepted the negative report, the filing of the private complaint is not maintainable, cannot be accepted.

17. Though the respondent in his private complaint filed under Section 200 Cr.P.C., has mentioned about the registration of F.I.R., in S.P.No. 3 of 2015 and filing of final report, he has not raised



any averments as to how and why the negative report filed by the police is not correct and the same cannot be accepted. More importantly, the learned Magistrate, who conducted enquiry under Section 202 Cr.P.C., and passed the impugned order under Section 204 Cr.P.C., has not at all considered the final report filed by the concerned police, the statements recorded under Section 161 Cr.P.C., and the other documents filed along with the final report.

18. The learned Counsel for the petitioners has relied on the judgment of this Court in **Narayanamma and Others Vs. Chikka Venkateshaiah** reported in **(2019)4 MLJ (Crl.) 616** and the learned Judge of this Court after referring various decisions, has held as follows:

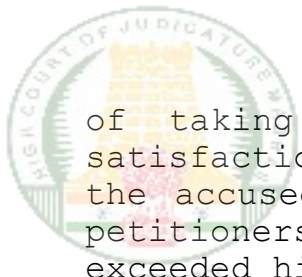
"20. It is clear from the above judgments that if the learned Magistrate wants to convert the protest petition into a private complaint, he has the jurisdiction to do so. However, at the time of taking cognizance, the learned Magistrate has to necessarily apply his mind on the closure report filed by the police and the statements recorded by the police during the course of investigation. This exercise has not been done by the Court below, while converting the protest petition in to a private complaint and taking cognizance of the same."

19. In the case on hand, the learned Magistrate has not even whispered anything about the negative report filed by the police and the statements recorded by them during the course of investigation. Generally, while taking cognizance of a private complaint, after conducting enquiry under Section 202 Cr.P.C., the learned Judicial Magistrate is expected not to pass any elaborate order, but he is duty bound to record his satisfaction that there are *prima facie* materials to proceed against the accused.

20. In the present case, the learned Magistrate has passed two pages order in Tamil in Cr.M.P.No.2913 of 2019, dated 07.03.2019, found available in the photocopy of the material parts of the records in C.C.No.89 of 2019 and Cr.M.P.No.2913 of 2019 submitted before this Court. But the learned Magistrate, in the notes papers, has passed the following docket order:

" Complainant present. Records perused. Taken on file under Sections 447, 351, 294(b), 427, 506(ii) and 120(b) I.P.C. Issue summons to accused on payment of process fee."

As rightly pointed out by the learned Counsel for the petitioners, the learned Magistrate has not at all recorded her satisfaction about the existence of *prima facie* materials to proceed. Moreover, the learned Magistrate has given a one line finding that a perusal of the evidence of the defacto complainant and his witness would reveal that the occurrence was true. It is pertinent to note that the Magistrate is not expected to record such a finding at the time



of taking cognizance of the case and he has to record his satisfaction that there existed prima facie case to proceed against the accused. As rightly contended by the learned Counsel for the petitioners, by giving such a finding, the learned Magistrate has exceeded his jurisdiction while taking cognizance of the case.

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21. The respondent, in the petition filed under Section 156(3) Cr.P.C., has specifically stated that the occurrence was known to two persons viz., Ponraj, S/o Raja Nadar and Periyasamy, S/o Madasamy. It is pertinent to note that the Sub-Inspector of Police has examined the said two witnesses and five more witnesses including the complainant and on that basis, has laid the final report as mistake of fact. As rightly pointed out by the learned Counsel for the petitioners, the said two witnesses cited the respondent himself in their statements recorded under Section 161 Cr.P.C., have stated that they were not aware of the occurrence alleged to have held on 28.04.2015 as alleged by the complainant. But the respondent in the complaint filed under Section 200 Cr.P.C., has introduced another witness viz., Pon Madasamy, S/o Chelliah Nadar, in addition to the two witnesses cited in the petition under Section 156(3) Cr.P.C.

22. During the enquiry under Section 202 Cr.P.C., the respondent/complainant has examined himself and also examined newly introduced witness Pon Madasamy and it is pertinent to note that the respondent has not chosen to examine the other two witnesses cited by him in the earlier complaint, who disowned the version of the complainant that they have witnessed the occurrence, while giving statements under Section 161 Cr.P.C.,

23. The learned Magistrate has miserably failed to consider the above aspect, i.e., the non-examination of the two witnesses cited in both complaints and the examination of newly introduced witness alone at the enquiry under Section 202 Cr.P.C. It is not the case of the complainant that the police has not at all examined the said two witnesses or that though the said witnesses gave statement that they had witnessed the occurrence, the police has recorded the statement, as if they are not supporting the case of the complainant.

24. Regarding the offence under Section 427 I.P.C., no doubt, the complainant has produced some photographs to show that asbestos sheet was damaged. As already pointed out, since there existed dispute with regard to the property in dispute, there is no evidence available to show as to when and who had put up the asbestos sheet. As already pointed out, there existed disputes between the parties with regard to the title and possession of the property in dispute and in the absence of any materials or evidence to show that the property in dispute was in possession of the complainant, the question of invoking Sections 427 and 447 I.P.C., does not arise at

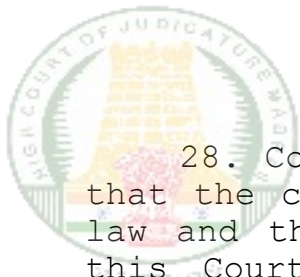


25. Regarding the offence under Section 506 I.P.C., it is necessary to show that the threat held by the accused is real and substantial. It is necessary to refer the judgment of this Court reported in **(1988) L.W. (Cr1.)178 (Noble Mohandass V. State)** and the relevant paragraph is extracted hereunder:

"7. As far as the offence under Section 506(2) is concerned, the learned counsel for the revision petitioner contended that the threat was not a real one, that it was of the kind of words which are currently and frequently used by people when they are angry and that further the threat was not spoken to by P.W. 3 and P.W. 4 who by that time had already come to the scene of occurrence. It is, in fact, found from the records that the threat would have been lashed out after P.Ws. 3 and 4 came to the place and separated both the husband and wife. Therefore, the evidence of P.W. 1 should have been corroborated by the evidence of P.W. 3 and P.W. 4 who were necessary witnesses to the occurrence. Since they did not corroborate the testimony of P.W. 1 in this aspect, the offence cannot be held to be proved. Further for being an offence under Section 506(2) which is rather an important offence punishable with imprisonment which may extend to seven years, the threat should be a real one and not just a mere word when the person uttering it does exactly mean what he says and also when the person at whom threat is launched does not feel threatened actually. In fact P.W. 1 when she filed the complaint to the police officer, did not express any fear for her life nor asked for any protection. Therefore, the offence under S. 506(2) is not made out."

26. In the case on hand, there is nothing on record to show that the complainant was criminally intimidated. Regarding the offence under Section 294(b) I.P.C., according to the prosecution, the petitioners had abused the defacto complainant in filthy language. The Kerala High Court in **Latheef Vs. State of Kerala** reported in **2014 (2) KLT 987** relying on the earlier judgements of Kerala High Court has held that 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 to make it punishable under Section 294(b) of IPC, the alleged words must be in a sense lascivious, or it must be appeal to the prurient interest, or will deprave or corrupt persons.

27. As rightly contended by the learned counsel for the petitioner, even assuming that the petitioner had uttered the words as alleged by the prosecution, the same will not satisfy the definition of obscenity and as such no offence under Section 294(b) is made out. Even assuming that the accused had uttered obscene words, there is no materials to show that the same had caused



28. Considering the above, this Court has no hesitation to hold that the cognizance taken by the learned Magistrate is not good in law and the same is liable to be interfered with. Consequently, this Court concludes that permitting the prosecution to proceed against the petitioners is only an abuse of process of law and hence, the proceedings in C.C.No.89 of 2019, pending on the file of the Court of Judicial Magistrate No.II, Kovilpatti as against the petitioners are liable to be quashed.

29. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.89 of 2019, pending on the file of the Court of Judicial Magistrate No.II, Kovilpatti as against the petitioners are quashed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS I)

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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

The Judicial Magistrate,
Court No.II,
Kovilpatti.

+1 CC to M/s.P.PETHU RAJESH, Advocate
(SR-22693[F] dated 29/04/2022)

Crl.O.P. (MD)No.7740 of 2019
29.04.2022

MGJ(25.05.2022) 9P 3C