



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 14.12.2021

Pronounced on : 31.01.2022

CORAM

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

CRL.O.P. (MD) .No.10082 of 2019

and

CRL.MP. (MD) Nos.6358 and 6359 of 2019

Ramesh : Petitioner/Sole Accused
Vs.

1.State represented by
The Inspector of Police,
Andipatti Police Station,
Theni District.
(Crime No.653 of 2017) : Respondent/Complainant

2.Vithya : Respondent/
Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to the petition in S.T.C.No.2062 of 2018 before the Judicial Magistrate, Andipatti, Theni District and quash the same.

For Petitioner : Mr.P.Sivachandran

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

: Mr.M.Ramu, for R2.

ORDER

The Criminal Original Petition has been filed, invoking Section 482 of Cr.P.C, to call for the records pertaining to the case in S.T.C.No. 2062 of 2018 pending on the file of the Court of the Judicial Magistrate, Andipatti, Theni District and quash the same.

2.The petitioner is the sole accused in S.T.C.No. 2062 of 2018 on the file of the Court of the Judicial Magistrate, Andipatti, Theni District. On the basis of the complaint lodged by the second respondent, FIR came to be registered on 07.09.2017 in Crime No.653 of 2017 for the alleged offence under Sections 294(b) and 323 IPC.

3.The first respondent, after completing the investigation, has laid the final report under Section 173 of Cr.P.C against the petitioner herein for the very same offences, and that the case was



taken on file in S.T.C.No. 2062 of 2018 and is pending on the file of the Court of the Judicial Magistrate, Andipatti, Theni District .

4.The case of the prosecution is that there existed property dispute between the complainant's husband and the petitioner, who are brothers, that on 25.06.2017 at about 04.00 pm, when the second respondent was proceeding to her house from her farm land, the petitioner, who came in the opposite direction in a two wheeler, had abused her in filthy language and assaulted her by using coconut shell and by throwing stones and thereby caused injuries.

5.The case of the petitioner is that since he was assaulted and criminally intimidated, he has also preferred a complaint before the Police, that since the Police has not taken any action, he filed a petition before this Court in Crl.OP(MD)No.8170 of 2017, seeking direction for registering the case and in pursuance of the directions of this Court, FIR came to be registered in Crime No.654 of 2017 for the alleged offence under Sections 323, 324 and 506(i) IPC as against the second respondent, her husband and her father, that since the Police has filed a final report closing the FIR as 'mistake of fact', the petitioner was constrained to file a private complaint under Section 200 Cr.P.C and the learned Judicial Magistrate, after conducting enquiry under Section 202 Cr.P.C, has taken the private complaint on file in C.C.No.190 of 2019 for the alleged offence under Sections 294(b), 427, 324 and 506(ii) IPC.

6.It is not in dispute that the second respondent, her husband and her father have filed a petition in Crl.OP(MD)No.7972 of 2019 under Section 482 Cr.P.C, to quash the private complaint in C.C.No.190 of 2019. Since the second respondent and his family members in Crl.OP(MD)No.7972 of 2019 have challenged the legality of the private complaint on the ground that since the jurisdictional police, after completing the investigation has filed the closure report and the same was accepted by the jurisdictional Magistrate, the complainant is not entitled to file a private complaint on the same cause of action. Rejecting the said contention, this Court without entering into the merits of the case, has dismissed the petition in Crl.OP(MD)No.7972 of 2019 vide order ,dated 12.01.2022.

7. The learned counsel for the petitioner would submit that there are no materials to attract the offence under Section 294(b) IPC and also the offence under Section 323 IPC is not attracted as the second respondent has not stated anything about the place where the accused assaulted.

8.In the case on hand, the Investigating Officer has recorded the statement of the second respondent, her father, who is shown as an eye witness and her husband under Section 161(3) Cr.P.C.

9.As rightly pointed out by the learned counsel for the second respondent, the Investigating Officer has also examined the Medical

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Officer, who had treated the second respondent at K.Vilakku Government Hospital. In the statement recorded under Section 161(3) Cr.P.C, the Medical Officer has specifically stated that when she was on duty on 25.06.2017, the second respondent came to the Hospital for treatment and found injuries on her left ear and left shoulder, that she was admitted as in-patient in IP.No.28312 and after treatment, was discharged on 27.06.2017 and that she had certified that the injuries suffered by her are simple in nature.

10.As rightly pointed out by the learned counsel for the second respondent, the second respondent visited the hospital at 05.30 pm on 25.06.2017 i.e., on the alleged occurrence day. In the FIR, it has been alleged that the incident was occurred at about 04.00 pm on 25.06.2017. As rightly contended by the learned Government Advocate (Criminal Side) two FIRs came to be registered for the alleged occurrence held at about 04.00 pm on 25.06.2017, the first one in Crime No.653 of 2017 at the instance of the second respondent and the second one in Crime No.654 of 2017 at the instance of the petitioner herein, that since the Investigating Officer after completing the investigation, has come to the decision that the petitioner was the aggressor, has laid the final report for the case registered in Crime No.653 of 2017, and closure report as 'mistake of fact' for the case registered in Crime No.654 of 2017, and that subsequently on the private complaint filed by the petitioner herein, the case in C.C.No.190 of 2019 was taken on file.

11.As rightly contended by the learned counsel for the second respondent, the prosecution has gathered/collected materials to proceed the case for the offence under Section 323 IPC. Regarding the offence under Section 294(b) IPC, as rightly pointed out by the defacto complainant side, the abusive or filthy words allegedly uttered by the petitioner find place in the charge sheet and as such it is a matter for trial. As rightly contended by both the parties, the case pending in C.C.No.190 of 2019 can only be considered as a case in counter and as such, both the cases are to be tried simultaneously.

12.In the result, the Criminal Original Petition is dismissed. The learned trial Judge is directed to conduct the trial of the above case and the other case in C.C.No.190 of 2019 simultaneously and dispose the cases as expeditiously as possible preferably within a period of four months from the date of receipt of copy of this order. Consequently, connected Miscellaneous Petitions are closed.

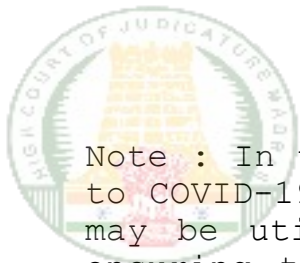
Sd/-

Assistant Registrar (P&A)

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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, Andipatti,
Theni District.
- 2.The Inspector of Police,
Andipatti Police Station,
Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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MGJ(25.02.2022) 4P 4C