



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 21/04/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP(MD)No.9869 of 2019

and

Crl.MP(MD)Nos.6240 and 6241 of 2019

1.M.A.Zafrulla Khan

2.Dr.Z.Faizal Khan : Petitioners/A1 and A2

Vs.

1.The State represented by
The Inspector of Police,
Nesamani Nagar Police Station,
Kanyakumari District.
(In Crime No.352 of 2014) : R1/Complainant

2.Athisaya Raja : R2/De-facto complainant

3.Mr.Elango,
The Additional Superintendent of Police,
Kanyakumari District,
Nagercol. : 3rd Respondent

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in CC No.62 of 2019 on the file of the Judicial Magistrate No.II, Nagercoil and quash the same.

For Petitioners : Mr.M.Ajmal Khan
for M/s.Ajmal Associates
For 1st Respondent : Mr.SS.Madhavan
Government Advocate
(Criminal side)
For R2 and R3 : No appearance

O R D E R

This petition has been filed seeking quashment of the case in CC No.62 of 2019 on the file of the Judicial Magistrate No.II, Nagercoil.



2. The case of the prosecution in brief:-

There was money transaction between the de-facto complainant and the first accused. On 15/04/2014 at about 4.00 am, the accused persons came near the house of the de-facto complainant and tried to paste the defamatory notice making imputations against the de-facto complainant and his family members among the public. At that time, when the de-facto complainant objected, enquired about the same, he was prevented, abused in filthy language and also criminally intimidated to kill him with bomb. On the basis of the complaint given by the de-facto complainant, a case in Crime No.352 of 2014 was registered for the offences under sections 341, 294(b), 500 and 506(2) IPC and after completing the formalities of investigation, final report was filed and it was taken cognizance in CC No.62 of 2019 by the trial court.

3. Seeking quashment of the same, both the accused persons have filed this petition mainly on the ground that A1 is the then Professor in Uthaya School of Engineering and A2 was the Research student in Chennai Anna University and now, he is working in abroad. Due to previous motive, the present case has been registered. The de-facto complainant and his family members cheated many people and in this regard, one Jeyaprakash Narayanan filed a complaint. Based upon which, a case in Crime No.35 of 2013 was registered for the offences under sections 406, 420, 506(ii) @ 406 and 420 IPC and later, final report was also filed. Another ground is that the property, which belongs to A1 was leased out to the 2nd respondent for accommodating a college. But the rent was not properly paid. Over which also, a suit in O.S No.27 of 2017 has been filed. Similarly, a suit was also filed against the 2nd respondent in O.S No.67 of 2014. Similarly, O.S No.8 of 2015 and that suit was decreed, on 30/12/2011. Only to wreck vengeance, such a false complaint has been given. On the earlier occasion also, FIR in Crime No.263 of 2014 was filed by the 2nd respondent and that was quashed by this court in Crl.OP(MD)No.14418 of 2018 and the 3rd respondent has also misused his power, while registering the above said case and a warning was given by this court in the above said order not to repeat the same.

4. Heard both sides.

5. Even though many factual aspects were raised in this case, those factual aspects cannot be taken into account. One of the grounds that has been mentioned in the petition filed by the petitioners, for quashment of the FIR in Crime No.262 of 2014. But it has no relevancy here. Whether there was a money transaction between the de-facto complainant and the first petitioner, whether any decree was passed and whether to wreck vengeance, this case complaint has been given, so also the case in FIR No.262 of 2014 are not factors for consideration by the trial court, which cannot be



taken into account in this petition. But one thing is clear on record that the present FIR in Crime No.352 of 2014 was registered, on 18/07/2014. The suit in O.S Nos.8 of 2015 and 67 of 2014 are stated to be pending before the concerned court.

6.It appears that during the pendency of the above said two suits only, the present occurrence said to have been taken place. Now we will confine, whether the allegation mentioned in the final report attracts the offence or not. The first charge is that the accused persons have detained the de-facto complainant, abused him in filthy language, criminally intimidated and they have also pasted the defamatory poster.

7.The learned Senior counsel appearing for the petitioners would submit that it is unthinkable that the first petitioner, who is the Professor in the School of Engineering will stoop to such a level to paste a defamatory poster that too in the early hours in the compound wall of the de-facto complainant not only highly improbable, but not true also, so also the second petitioner was the Research Scholar at that time.

8.No doubt both the petitioners are in high status in the society. But the status cannot decide the offences. Such a ground need not be taken into account. The offence said to have been taken place, on 15/04/2014. The final report has been filed, on 05/11/2018 and it was presented before the trial court, on 02/01/2019 after a lapse of 1-1/2 years. During the course of investigation, the police has not recovered anything from the compound wall of the de-facto complainant even in the param, nothing has been stated as to the above said defamatory notice. That was also not recovered by the Investigating Officer. So why it was not recovered. There is no proper explanation. In the absence of recovery of the alleged defamatory poster, absolutely no material is available attracting the provision of section 500 Cr.P.C. Even though cognizance has also been inclined in the FIR and in the final report to attract the offence under section 500 Cr.P.C, as mentioned earlier, material must be available. In the complaint, it has been stated that the accused persons tried to paste the defamatory notice. But during the statement, they have stated that it was already pasted and that was objected and questioned and at that time only, the accused persons prevented the de-facto complainant, abused him in filthy language and also criminally intimidated. Regarding section 294(b) IPC, it is stated that they used abusive language.

9.The learned Senior counsel appearing for the petitioners would submit that absolutely, there is no ingredient to attract the offence under section 294(b)IPC. According to him, it must be uttered in the public place or in the hearing of the public to the annoyance of others. But here, it has been stated that it was used in the public place in front of the house of the de-facto complainant. This contention is not accepted. In so far the



offence under section 506(2) IPC is concerned, mere threat by using of the words is not sufficient.

10. Section 503 IPC reads as follows:-

"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."

11. It is settled position of law that for attracting the offence under section 506(2) IPC, the offender must cause criminal intimidation and by which, the victim must entertain fear of death. Here, absolutely there is no ingredient to attract the offence under section 506(2) IPC. So if at all, the offences under sections 294(b) and 341 IPC alone will be attracted. Further, the Additional Superintendent of Police, Crime Branch, was warned by this court in Crl.OP(MD)No.14418 of 2014, dated 22/01/2016. Because of the above said vengeance only, he made a recommendation to register a case. These things cannot be taken into account at this stage. Now final report has been filed, much after the period of limitation, which is clearly barred under section 468 Cr.P.C. On that sole ground, this petition is liable to allowed.

12. In the result, this criminal original petition is **allowed**. The impugned proceedings in CC No.62 of 2019 on the file of the Judicial Magistrate NO.II, Nagercoil is hereby quashed as against the petitioners. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

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Sub Assistant Registrar(CS)

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To,

1.The Judicial Magistrate No.II,
Nagercoil.

2.The Inspector of Police,
Nesamani Nagar Police Station,
Kanyakumari District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-20756[F]
dated 25/04/2022)

Crl.OP(MD)No.9869 of 2019
21.04.2022

NSN (CO)
GC (09.06.2022) 5P 5C