



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD) No.13184 of 2020

and

Crl.M.P(MD) Nos.6037 and 6038 of 2020

Murugarajan

...Petitioner/ Sole Accused
Vs.

1. The State rep. by
The Inspector of Police,
Thirunagar Police Station,
Madurai City.
(Crime No.22 of 2020)

... 1st Respondent/Complainant

2.Udayakumar

...2nd Respondent/
Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to call for the records relating to the Final Report in C.C.307 of 2020 on the file of Judicial Magistrate Court No.6, Madurai and quash the same as illegal so far as the petitioner is concerned.

For Petitioner : Mr.S.Durai Pandian

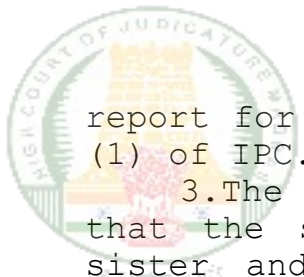
For R1 : Mr.B.Thanga Aravindh
Government Advocate

For R2 : Mr.C.Gangai Amaran

ORDER

The criminal original petition has been filed seeking to quash the proceedings in C.C.No.307 of 2020, on the file of the learned Judicial Magistrate Court No.VI, Madurai.

2.On the complaint lodged by the second respondent, the first respondent registered an FIR in Crime No.22 of 2020 for the offences under Sections 294(b), 448, 427, 323 and 506(1) of IPC. On the allegations that on 23.11.2021, at about 12 pm, when the defacto complainant started to renovate the shop with the help of the other workers, the petitioner had trespassed into the premises and started to vacate the defacto complainant and others and abused them in filthy language. The petitioner had also attacked him with his hands and he threatened him with dire consequences. After completion of investigation, the first respondent filed a final



report for the offences under Section 294(b), 448, 427, 323 and 506 (1) of IPC.

3.The learned Counsel appearing for the petitioner would submit that the shop belongs to one Jeyarani, who is the petitioner's sister and it was renovated by the defacto complainant at the instigation of the petitioner's sister. The petitioner's sister is claiming the subject property on the strength of the Will executed by their father. In this regard, already a Probate OP is contested by the petitioner and pending in OP.No.1 of 2020, on the file of the learned First Additional District Court, Madurai. The said complaint has been lodged only at the instigation of the petitioner's sister to create a rival claim. Further, he submitted that there is a delay in registration of FIR, though the crime taken place on 23.11.2019, on the same day itself the second respondent had lodged the complaint, the first respondent had registered the case only on 13.01.2020, that too, without any explanation for the delay of 50 days. Infact, for the very same occurrence, the petitioner had also lodged a complaint and he was issued with CSR.No.341 of 2019, which is in the nature of civil dispute. Likewise, on the complaint received from the second respondent, the first respondent had issued CSR.No.340 of 2019, which is in the nature of wordy quarrel. However, the complaint lodged by the second respondent had been registered in Crime No.22 of 2020 and the complaint lodged by the petitioner was not considered by the first respondent. Further, he would submit that no offence is made out even according to the case of the prosecution. The petitioner entered into the shop and shouted at the defacto complainant. Therefore, offence under Section 294(b) will not attract as against the petitioner, since it is not a public place. So far as, Section 323 of IPC is concerned, the defacto complainant did not sustain any injury and he never went to any hospital for any treatment. Even as per the charge sheet, no damage was recorded by the first respondent.

4.The learned Counsel appearing for the second respondent would submit that there is a specific allegation as against the petitioner to attract the offence under Sections 294(b), 448, 427, 323 and 506 (1) of IPC. The second respondent lodged a complaint on the very date of occurrence, however, the first respondent had registered the case only on 13.01.2020, for which, the second respondent cannot be victimized for the registration of belated FIR.

5.Heard the learned Counsel appearing for the petitioner, the learned Government Advocate (Crl.Side) appearing for the first respondent and the learned Counsel appearing for the second respondent.

6.For the complaint, dated 23.11.2019, lodged by the second respondent, the first respondent had registered an FIR on 13.01.2020, for the offences under Sections 294(b), 448, 427, 323 and 506 (1) of IPC in Crime No.22 of 2020 and for the very same



occurrence, the petitioner had lodged a complaint and he was issued with CSR No.341 of 2019 and no FIR has been registered so far. Though the second respondent had stated that the petitioner had damaged the serial bulbs to the tune of Rs.2,000/-, there is absolutely no evidence to prove the said statement. Infact, the first respondent had filed a final report and which would reveal that the value of the property damaged is zero(Nil).

7. Admittedly, while the second respondent and other staffs were in the shop, which was under renovation, the petitioner had entered into the shop and scolded them in filthy language. Therefore, the offence under Section 294(b) will not attract as against the petitioner.

8. In this regard, it is relevant to extract the provision under Section 294(b) of IPC, which reads as under:

"294. Obscene acts and songs -Whoever, to the annoyance of others-

(a) does any obscene act in any public place, or

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place,

shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."

9. It is relevant to rely upon the judgment of this Court in ***Crl.O.P. (MD) No.11030 of 2014 (Abdul Agis Vs. State through the Inspector of Police)***, which reads as follows:-

"7. It is seen from the statements recorded under Section 161(3) of Cr.P.C. of the second respondent/ defacto complainant that it does not contain any obscene words, which were uttered by the petitioner herein and the entire allegations are very simple in nature. It is also seen from the statement of one Uthami, that the petitioner threatened the defacto complainant with dire consequences when he dashed the defacto complainant. The entire allegations are trivial in nature. Further, to attract the offence under Section 506(i) of I.P.C., there was a threatening only by words. As pointed by the learned counsel appearing for the petitioner, the threat should be a real one and not just a mere word when the petition uttering does not exactly mean what he says and also when the person to whom threat is launched does not feel threatened actually. Therefore, the offences under Sections 294(b) and



petitioner herein and also the entire criminal proceedings is clear an abuse of process of Court. Therefore, this Court is inclined to quash the entire proceedings."

10. That apart, already the Will executed in favour of his sister is under probate in O.P.No.1 of 2020, on the file of the learned First Additional District Court, Madurai. Therefore, the entire proceedings in C.C.No.307 of 2020 cannot be sustained as against the petitioner and the same is quashed. Accordingly, the criminal original petition is allowed. Consequently, the connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (As)

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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 VI,
Madurai.

2.The First Additional District Judge, Madurai.

3. The Inspector of Police,
Thirunagar Police Station,
Madurai City.

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

+1 CC to M/s.K.S. DURAIPANDIAN, Advocate (SR-16860[F] dated
06/04/2022)

Crl.O.P.(MD) No.13184 of 2020
05.04.2022

RD(16.05.2022) 4P 6C