



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.04.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD)No.15591 of 2020

and

Crl.M.P (MD)No.7627 of 2020

WEB COPY

1.Micheal Vijila @ Vijila

2.Antony Jeyakumar

... Petitioners/Accused Nos.1 & 2

Vs.

1. State represented by,
The Sub-Inspector of Police,
Asaripallam Police Station,
Kanyakumari District.

(In Crime No.103 of 2019). ... 1st Respondent/Complainant

2.Makesh @ Mahesh

... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the charge sheet in C.C.No.340 of 2020 on the file of the learned Judicial Magistrate No.I, Nagercoil and quash the same as illegal insofar as the petitioners are concerned.

For Petitioners

: Mr.P.M.Vishnuvarthanan

For R - 1

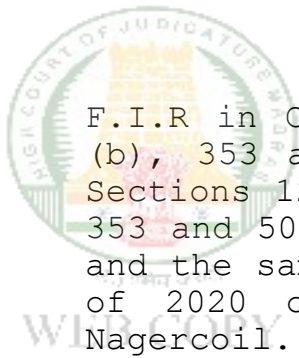
: Mr.B.Thanga Aravindh

Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been to quash the charge sheet in C.C.No.340 of 2020 on the file of the learned Judicial Magistrate No.I, Nagercoil, insofar as the petitioners are concerned.

2.The case of the prosecution is that on 16.09.2019, while the first petitioner travelled in her two-wheeler bearing Registration No.TN-02-BL-0527 without wearing helmet, the second respondent stopped her and questioned the same, for which, the first petitioner did not show any document of the vehicle and stated that she is a practising Advocate and flea from the scene of occurrence. Thereafter, the first petitioner came along with her husband, namely the second petitioner in a four wheeler bearing Registration No.TN-02-BP-6039 and abused the second respondent with filthy language by showing the car that they are practising Advocates. Hence, the second respondent lodged a complaint before the first respondent. On the basis of the complaint, the first respondent registered the



F.I.R in Crime No.103 of 2019 for the offences under Sections 294(b), 353 and 506(ii) of I.P.C and the same has been altered into Sections 129 and 177 of the Motor Vehicles Act and Sections 294(b), 353 and 506(ii) of I.P.C. The first respondent filed a final report and the same has been taken cognizance in C.C.No.340 of 2020 on the file of the learned Judicial Magistrate No.I, Nagercoil.

3.The learned counsel appearing for the petitioner would submit that the first respondent filed the final report by citing 14 witnesses to substantiate the charges for the offences under Sections 129 and 177 of the Motor Vehicles Act and Sections 294(b), 353 and 506(ii) of I.P.C. All the witnesses are police officials along with four auto rickshaw persons. Even according to the prosecution, the provisions related to Sections 294(b) and 506(ii) of I.P.C were not made, since there is no witness stated that the allegation was made in front of them. Therefore, the entire case of the prosecution is false, baseless and the petitioners are being law holder have been attracted into this criminal proceedings.

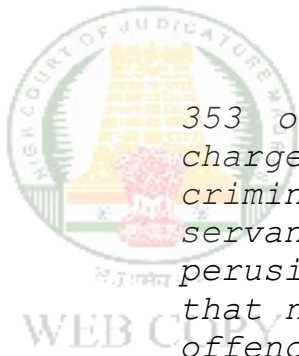
4.Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Criminal Side) appearing for the first respondent.

5.On a perusal of the statement recorded under Section 161(3) of Cr.P.C and the charge-sheet filed as against the petitioners revealed that they were charged for the offences under Sections 294(b), 353 and 506(ii) of I.P.C and also under Sections 129 and 177 of the Motor Vehicles Act

6.Insofar as the offence under Section 353 of I.P.C is concerned, the essential ingredients to attract the offence under Section 353 of I.P.C are that the person accused of the said charge should have assaulted the public servant or used criminal force with intent to prevent or deter the public servant from discharging his duty as public servant. On a perusal of the entire materials produced along with the charge-sheet, it appears that no force was used by the petitioners to commit such an offence. That apart, there is absolutely nothing on record to show that the petitioners either assaulted the second respondent or used criminal force to prevent that the second respondent from discharging his official duty. Therefore, the ingredients of the offence under Section 353 of I.P.C are not made out.

7.The Honourable Apex Court in the case of **Manik Taneja and another Vs. State of Karnataka and another** reported in **2015 (7) SCC 423**, held as follows:-

"A reading of the above provision shows that the essential ingredients to attract the offence under Section



353 of I.P.C are that the person accused of the said charge should have assaulted the public servant or used criminal force with intent to prevent or deter the public servant from discharging his duty as public servant. By perusing the materials available on record, it appears that no force was used by the appellants to commit such an offence. There is absolutely nothing on record to show that the appellants either assaulted the second respondent or used criminal force to prevent that the second respondent from discharging his official duty. Taking the uncontroverted allegations, in our view, the ingredients of the offence under Section 353 of I.P.C are not made out".

8.Insofar as the offence under Section 294(b) of I.P.C is concerned, the essential ingredients that intended to prevent obscene acts being performed in public to the annoyance of the public at large. Annoyance to others is an essential ingredient to the offence under the Section. On a perusal of the materials produced by the prosecution, there are no traces for attributing the annoyance to others. That apart, there is no statement that the alleged act caused annoyance to others. Hence, there is no allegation to attract the offence under Section 294(b) of I.P.C.

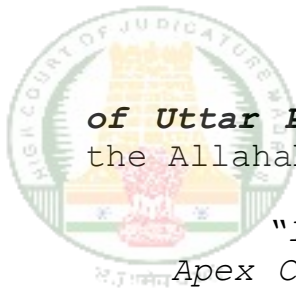
9.It is relevant to rely upon the judgment of this Court reported in **1996(1) CTC 470** in the case of **K.Jeyaramanuju Vs. Janakaraj & anr.**, which held as follows :-

"To prove the offence under Section 294 of IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case."

The above judgment is squarely applicable to the present case and the allegations are frivolous in nature and the petitioner need not go for ordeal of trial.

10.Insofar as the offence under Section 506(ii) of I.P.C is concerned, the prosecution has to prove that threatening a person with any injury, to his person, reputation or property, to the person or reputation of any one in whom that person is interested, the threat must be with intent, to cause alarm to that person, to cause that person to do any act which he is not legally bound to do so the means of avoiding the execution of such threat and to cause that person to omit to do any act which that person is legally entitled to do as the means of avoiding the execution of such threat.

11.It is relevant to rely upon the Judgment of the Allahabad High Court, in the case of **Chandra Shekhar Singh and others Vs. State**
<https://hcservices.ecourts.gov.in/hcservices/>



of Uttar Pradesh and others reported in **Manu/UP/4155/2017**, wherein the Allahabad High Court has held as follows:-

"It has been consistently held by the Honourable Apex Court and also by various High Court that before an offence under this Section is made out, it must be established that the accused had an intention to cause an alarm to the complainant. In order to attract the ingredients of Section 506 of I.P.C, the intention of the accused must be to cause alarm to the victim. Mere expression of words without any intention to cause alarm would not suffice. Mere vague and bald allegations that the accused threatened the victim with dire consequences is not sufficient to attract the provisions under Section 506 I.P.C. The threat should be a real one and not just a mere word when the person uttering does not exactly mean what he says and also when the person against whom the threat is launched, does not feel threatened actually. It should appear that the complainant was feeling for his life."

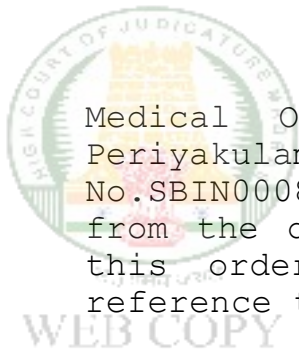
12.In the case on hand, there is no sufficient ingredients to attract the offence under Section 506(ii) of I.P.C, except the vague and bald allegations of criminal intimidation. The entire allegations are nothing but abuse of process of law.

13.Insofar as the offence under Section 177 of the Motor Vehicles Act is concerned, the same is punishable with fine. Section 177 of the Motor Vehicles Act, 1988 reads as follows:-

*"177.General provision for punishment of offences
Whoever contravenes any provision of this Act or of any rule, regulation or notification made thereunder shall, if no penalty is provided for the offence, be punishable for the first offence with the fine which may extend to five hundred rupees and for any second or subsequent offence with fine which may extend to one thousand and five hundred rupees."*

Hence, this Court is inclined to quash the entire proceedings in C.C.No.340 of 2020 on the file of the learned Judicial Magistrate No.I, Nagercoil with certain conditions.

14.In view of the above, the entire proceedings in C.C.No.340 of 2020 on the file of the learned Judicial Magistrate No.I, Nagercoil is quashed on conditions that the the first petitioner shall file an undertaking affidavit before the first respondent to the extent that in future, she will wear helmet while riding the motor cycle and also the petitioners shall deposit a sum of Rs.10,000/- (Rupees Ten Thousand Only) to the District Siddha



Medical Officer, CCRI, Periyakulam in State Bank of India, Periyakulam Branch bearing Account No.10767823177, IFSC No.SBIN000898, MICR Code No.625002601, within a period of two weeks from the date of receipt of a copy of this order, failing which, this order shall stand dismissed automatically without further reference to this Court.

15. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CRL SIDE)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

Ps

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 No.I, Nagercoil.
- 2.The Sub-Inspector of Police,
Asaripallam Police Station, Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

COPY TO

1. The District Siddha Medical Officer, CCRI, Periyakulam

+1 CC to M/s.P.M. VISHNU VARTHANAN, Advocate (SR-20673[F] dated 22/04/2022)

Order made in
Crl.O.P(MD)No.15591 of 2020
22.04.2022

SS(CO)

TR(04.05.2022) 5P 6C