



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.12.2021

Delivered on : 28.01.2022

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CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.19481 of 2018

and

Crl.M.P.(MD)Nos.8843 & 8844 of 2018

Ilampiraiyan

... Petitioner/Sole Accused

vs.

1.The Inspector of Police,
Rajapalayam South Police Station,
Virudhunagar District.
(Crime No.519 of 2018)

...Respondent/Complainant

2.Selvakumar

...2nd Respondent/
Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the entire records of the pending case in S.T.C.No.4335 of 2018 on the file of the learned Judicial Magistrate Court, Rajapalayam and quash the same as illegal.

For Petitioner : Mr.R.Karunanidhi

For Respondents : Mr.M.Muthumanikkam
Government Advocate (Crl. side) for R1
No appearance for R2

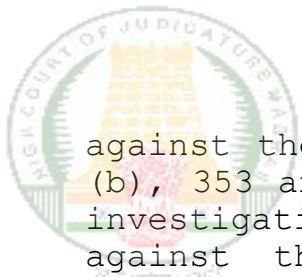
O R D E R

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records in S.T.C.No.4335 of 2018 pending on the file of the Court of the Judicial Magistrate, Rajapalayam and quash the same.

2.The petitioner is the sole accused in S.T.C.No.4335 of 2018 on the file of the Court of the Judicial Magistrate, Rajapalayam.

3.On the basis of the complaint lodged by the second respondent, FIR came to be registered in Crime No.519 of 2018

<https://hcservices.ecourts.gov.in/hcservices/>



against the petitioner for the alleged offences under Sections 294 (b), 353 and 506(i) IPC. The first respondent, after completing the investigation, has laid a final report under Section 173 Cr.P.C. against the petitioner herein for the alleged offences under Sections 294(b), 353 and 506(i) IPC and the case was taken on file in S.T.C.No.4335 of 2018 and the same is pending on the file of the learned Judicial Magistrate, Rajapalayam.

4.The case of the prosecution is that on 26.08.2018 at about 01.00 p.m., at I.N.T.U.C. Nagar in Rajapalayam to Sankarankoil main road, when the Sub-Inspector of Police Pethi @ Thirumalai Raja along with his police party were on routine vehicle checkup, three persons including the petitioner came in a two wheeler and on seeing the same, the police party had instructed them to stop the vehicle, that the vehicle after crossing the police party to some distance, dropped the petitioner from the vehicle and proceeded without stopping and the others had escaped from the place, that when the petitioner was questioned about the other two persons, the petitioner had abused the defacto complainant in filthy language and also had caught hold of the uniform shirt and thereby, prevented him from discharging his official duty and that the petitioner had also threatened the police party that he would kill them if they stop the vehicles anymore and thereby, he committed the offences punishable under Sections 294(b), 353 and 506(i) IPC.

5.But the case of the petitioner/accused is that they, on seeing the police party, stopped the motorbike and after dropping him, moved the bike from that place, that the petitioner was only offered a lift in the motorcycle, that when the police asked him to call the other two persons through mobile phone, he informed that he did not have a mobile phone but gave the details of the other two, that the Sub-Inspector of Police had then asked the petitioner's caste and native and on hearing the reply that the petitioner was from Desikapuram and belonged to a Scheduled Caste community, the police scolded him with casteist slurs, that when he objected to the slurs, the Sub-Inspector of Police had started beating him and thereafter, the petitioner was taken to Rajapalayam Police Station and beaten up by 5 police personnel including Sub-Inspector Arun Kumar, Sub-Inspector Moventhan, Writer Marbi John, Sub-Inspector Pethi @ Thirumalai Raja and Constable Iyyappan, that they have thrashed with lathis and boots and he was bleeding through his nose and that subsequently they have lodged a false FIR and the petitioner was remanded to judicial custody.

6.The petitioner's further case is that he was granted bail four days later and he underwent treatment at Srivilliputtur Government Hospital for a period of three days and thereafter at Government Rajaji Hospital for a period of four days, that the medical records disclosed the injuries and his CTC scan report revealed that he had sustained undisplaced fracture noted at nasal bone on right side.



7.It is not in dispute that the complaint given by the petitioner was registered in C.S.R.No.376 of 2018 on 03.09.2018, but no FIR was registered. According to the petitioner, his representations dated 08.09.2018 and 17.09.2018 to the Superintendent of Police, Virudhunagar and other higher officials were of no avail.

8.It is not in dispute that the petitioner has filed a private complaint under Section 200 Cr.P.C. r/w Section 30 of Human Rights Act against the police officials for committing the case for the alleged offences under Sections 166, 167, 217, 294(b), 342, 307, 325 IPC r/w Section 34, 21 r/w 44 District Police Act 1859. The learned Magistrate has taken the petition on file in Cr.M.P.No.1708 of 2019 and after conducting enquiry, has passed an order dated 08.04.2019 dismissing the same.

9.The learned counsel for the petitioner would submit that the first respondent has registered the FIR in a hurry-burry manner without following the procedures with sole intention to detain the petitioner into jail, that there is not even a *prima facie* case made out against the petitioner and that the criminal proceedings is manifestly attended with *mala fide* and with an ulterior motive for wreaking vengeance on the petitioner. The learned counsel for the petitioner would further submit that the petitioner is a MCA graduate and he is preparing for exams including TNPSC exams.

10.The learned counsel for the petitioner would submit that mere gesture or preparation to use such force shall not amount to assault and as such, the offence under Section 353 IPC will not be attracted against the petitioner. He would further submit that some utterance of words would not attract the provision of Section 506(1) IPC and that the threat should be a real one and not just mere words. He would further contend that there is no whisper about attraction of Section 294(b) IPC in the complaint or in the final report.

11.Let us take the offence under Section 353 IPC at first. According to the prosecution, the petitioner, while abusing the complainant had caught hold of the uniform shirt and thereby, prevented him from discharging his duty. It is necessary to refer Section 353 IPC which reads as follows:-

"353:-Assault or criminal force to deter public servant from discharge of his duty - whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge



of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

12.The Hon'ble Supreme Court in **Manik Taneja and another vs. State of Karnataka and another** reported in (2015) 7 SCC 423 has held that the person accused of the offence should have assaulted the public servant or used criminal force with the intention to prevent or deter the public servant from discharging his duty and the relevant passage is extracted hereunder:-

"12. A reading of the above provision shows that the essential ingredients of the offence under Section 353 IPC are that the person accused of the offence should have assaulted the public servant or used criminal force with the intention to prevent or deter the public servant from discharging his duty as such 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 respondents or used criminal force to prevent the second respondent from discharging his official duty. Taking the uncontroverted allegations, in our view, that the ingredients of the offence under Section IPC are not made out."

13.As rightly contended by the learned counsel for the petitioner, when a police party led by a Sub-Inspector of Police was present at the occurrence place, the contention of the prosecution that the petitioner had caught hold of the uniform shirt of the complainant and abused him is hard to believe.

14.It is not the specific case of the prosecution that the petitioner had assaulted the police officials or used criminal force with an intention to prevent or deter them from discharging their duties. Even assuming that there was some gesture or preparation to use such criminal force, as rightly contended by the learned counsel for the petitioner, the same cannot be considered as assault or using of criminal force to deter them from discharging their duties. Considering the above, this court is of the view that the ingredients of the offence under Section 353 IPC are not made out.

15.Coming to the offence under Section 506(1) IPC, it is necessary to refer the following passages in **Manik Taneja's** case cited supra.

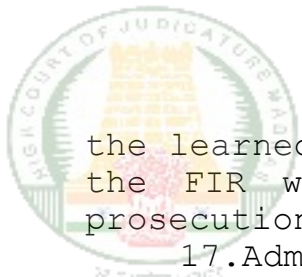
11. Section 506 IPC prescribes punishment for the offence of criminal intimidation. "Criminal intimidation" as defined in Section 503 IPC is as under:-

"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

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A reading of the definition of "Criminal intimidation" would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.

16. In the present case, in the FIR, it has been alleged that the petitioner had prevented the complainant from discharging duty, the other police officials had shouted at the petitioner directed him to go and at that time, the petitioner had threatened the complainant that in case if they stop the vehicles more, he would kill them and thereafter, he had attempted to escape from the place and that while the police party had chased him, he fell down and sustained injuries. As rightly pointed out by



the learned counsel for the petitioner, a perusal of the contents of the FIR would only suggest that the occurrence alleged by the prosecution appears to be improbable and unbelievable.

17. Admittedly, the prosecution has alleged that the complainant was threatened by the petitioner and at that time of the alleged threatening, other police officials were very much available at that place. Considering that scenario, as rightly contended by the learned counsel for the petitioner, it cannot be said that the complainant was alarmed at the threatening of the petitioner. It is not the case of the prosecution that the threat was with an intention to cause alarm to the complainant or to cause that person not to discharge his work.

18. In the case on hand, it is not shown that the petitioner has intention to cause alarm in the mind of the complainant or to cause any distraction in discharging of his duties. Moreover, it is not the specific case of the prosecution that the defacto complainant and other police personnel were criminally intimidated.

19. Regarding the offence under Section 294(b) IPC, it is the case of the prosecution that the petitioner had abused the complainant in filthy words but admittedly, as rightly pointed out by the learned counsel for the petitioner, in the FIR as well as in the statement of the complainant and the other eye witnesses, the filthy or abusing words allegedly used by the petitioner does not find place. The prosecution has nowhere whispered about the alleged abusing words uttered by the petitioner and attraction of Section 294(b) IPC.

20. Considering the above, this Court has no hesitation to hold that the prosecution has not shown any materials for making out *prima facie* case for the alleged offences under Sections 294(b), 353 and 506(1) IPC.

21. As already pointed out, the petitioner has PG in Computer Application and is now in search of jobs. As rightly contended by the learned counsel for the petitioner, keeping the above case pending would affect the life and future of the petitioner and hence, this Court concludes that the proceedings in S.T.C.No.4335 of 2018 are liable to be quashed.

22. In the result, this Criminal Original Petition is allowed and the proceedings in S.T.C.No.4335 of 2018 on the file of the learned Judicial Magistrate, Rajapalayam, stand quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS I)

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/ /2022

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,
Rajapalayam.
- 2.The Inspector of Police,
Rajapalayam South Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD) No.19481 of 2018
and
Crl.M.P. (MD) Nos.8843 & 8844 of 2018
28.01.2022

MGJ(09.03.2022) 7P 4C