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Crl.O.P.No.3677 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.09.2023

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

Crl.O.P.No.3677 of 2018

and

Crl.M.P.No.1663 of 2018

1.M. Pushpavalli
2.A. Murugan
3.M. Logasundari

... Petitioners

Vs.

1.The State Rep., by
The Inspector of Police,
Kunathur Police Station,
Tirupur District.

2.Periyasamy

... Respondents

[R2 is impleaded as per order dated 23.03.2018]

Prayer : Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records of C.C.No.170 of 2017 for commission of alleged offences punishable under Sections 448, 294(b), 323 and 506(i) of IPC and quash the same pending on the file of learned Judicial Magistrate, Avinashi.



Crl.O.P.No.3677 of 2018

For Petitioners ... Mr. D. Prasanna

For Respondents ... Mr. L. Baskaran, for R1
Mr. S.N. Arun Kumar, for R2

ORDER

This Criminal Original Petition is filed challenging the criminal proceedings in C.C.No.170 of 2017 on the file of learned Judicial Magistrate, Avinashi.

2. The learned counsel for the petitioners submitted that the petitioners are accused in C.C.No.170 of 2017 on the file of learned Judicial Magistrate, Avinashi. In pursuance of the complaint given by second respondent, the case has been registered by the first respondent-police in Crime No.241 of 2017 for the offences under Sections 448, 294(b), 323 & 506(i) IPC. After investigation, final report has been filed. Further contended that the petitioners filed a civil suit against the defacto complainant and her daughter-in-law in O.S.No. 111 of 2014 on the file of District Munsif, Avinashi and also filed I.A.No.375 of 2014, seeking temporary injunction on the ground that the petitioners are in possession of



Crl.O.P.No.3677 of 2018

the property. The trial Court also granted interim injunction on 05.08.2016.

Under these circumstances, the petitioners are being in possession of the property, thus, Section 448 IPC, will not attract.

2.1 Further contended that though the police charged for the offence under Section 323 IPC on the allegation that the first petitioner assaulted Periyasamy Gounder / defacto complainant but there is no medical evidence to support the allegation. In the absence of medical evidence to support the allegation of assaulting the defacto complainant, no offence is made out under Section 323 IPC.

2.2 Further contended that for the offences under Sections 294(b) and 506(i) IPC also there is no sufficient ingredients in the materials available on prosecution records. The statement of the defacto complainant and other alleged eye witnesses are not enough to hold the proceedings for the offences under Sections 294(b) and 506(i) IPC. Therefore, seeking to quash the criminal proceedings.



Crl.O.P.No.3677 of 2018

WEB COPY

3. The learned Government Advocate (Crl.Side) appearing for the State submitted that the case in C.C.No.170 of 2017 on the file of Judicial Magistrate, Avinashi has been transferred and renumbered as C.C.No.390 of 2019. Further submitted that the case has been taken on file and summon has been issued to the accused. The case is pending for service of summons.

4. The learned counsel appearing for the defacto complainant submitted that there is a sufficient material to proceed against the petitioners / accused and there is no ground to quash the criminal proceedings against the petitioners and there is no merit in the Crl.O.P.

5. I have considered the matter in the light of the submission made by the counsel for the parties and perused the records.

6. On perusal of the records, it is noticed that the defacto complainant / second respondent herein gave a complaint to the first



respondent-police on 16.08.2017. In pursuance of the complaint, the case has been registered in Crime No.241 of 2017 for the offences under Sections 448, 294(b), 323 and 506(i) IPC. After investigation, final report has been filed and it was taken on file in C.C.No.170 of 2017. Further, it is not disputed that there is a dispute with regard to the property between the petitioners and the defacto complainant. It is also not disputed that the civil case is pending between the parties with regard to the property. Under these circumstances, it is alleged that the occurrence took place on 16.08.2017. Further material reveals that the petitioners already filed a civil suit in O.S.No. 111 of 2014 on the file of District Munsif, Avinashi with a prayer to declare the Power of Attorney deed executed by the plaintiffs in favour of the first defendant as null and void and also to declare the sale deed executed by the first defendant in favour of the second defendant, upon the power deed also invalid with a direction for mandatory injunction to return the original documents and to restrain the defendants from interfering with the possession of plaintiffs. Further, in I.A.No.375 of 2014, the trial Court granted temporary injunction in favour of the petitioners on 05.08.2016. After temporary injunction granted in



favour of the petitioners, it is alleged that the occurrence took place on 16.08.2017. Since the petitioners are in possession of the disputed property, as per the averments in the plaint and accepted by the trial Court while granting temporary injunction, no offence is made out under Section 448 IPC, as stated by the respondent-police.

7. Further, on perusal of the list of witnesses filed by the police along with the final report, there is no medical evidence to support the allegation that the defacto complainant / Periyasamy was assaulted by the first petitioner and caused injuries. In the absence of any medical evidence, no offence is made out under Section 323 IPC also.

8. Next, for the offence under Section 294(b) IPC, I have gone through the statement of the defacto complainant and other alleged eye witnesses viz., L.W.2 / Santhanam, L.W.3 / Sathyavan, L.W.4 / Kamarajpandian and L.W.5 / Marichamy.

Section 294(b) reads as follows:-

(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. In view of the requirement of the above provisions in this case, the statement of witnesses and defacto complainant are not making any required ingredients to invoke offence under Section 294(b) IPC. The remaining charge under Section 506(i) IPC, for this also, I have gone through the statement of the defacto complainant and alleged witnesses. Mere words, Section 506(i) IPC reads as follows:-

“Punishment for criminal intimidation.- Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both; if threat be to cause death or grievous hurt, etc.-And if the threat be to cause death or grievous hurt, etc.-And if the threat be to cause death or grievous hurt, or to cause the destruction of any property by fire, or to cause an offence punishable with death or imprisonment for life, or with imprisonment for a term which may extend to seven years, or to impute, unchastity to a woman, shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both.”



Crl.O.P.No.3677 of 2018

There is no material to show that there is a real intimidation by the petitioners. Under these circumstances, no requirement for the offence under Section 506(i) IPC is available on record.

10. In the absence of any material for the above said offences, continuing the criminal proceeding is misusing the process of law against the petitioners. It will meet the parameters laid down by the Hon'ble Supreme Court in the cases in *State of Haryana vs. Ch.BhajanLal (AIR 1992 SC 604)* and *M/s Neeharika Infrastructure Pvt. Ltd. Vs. State of Maharashtra and others (2021 SCC online 315)*.

11. In view of the above facts and in the absence of any evidence and material on records, to proceed against the petitioners in continuing the criminal proceeding is misusing the process of law and liable to be quashed. Accordingly, the criminal proceeding in C.C.No.170 of 2017 on the file of Judicial Magistrate, Avinashi is hereby quashed.



Crl.O.P.No.3677 of 2018

WEB COPY 12. In the result, the Criminal Original Petition is allowed.

Consequently, connected miscellaneous petition is closed.

25.09.2023

Index : Yes/No

Neutral Citation : Yes/No

AT

To

The Judicial Magistrate, Avinashi.



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Crl.O.P.No.3677 of 2018

V.SIVAGNANAM ,J.

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