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Crl.O.P.No.5014 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2023

CORAM:

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

CRL.O.P.No.5014 of 2021 and
Crl.MP.Nos.3199 & 3200 of 2021

- 1.Veerapandian
- 2.Kiruthika @ Keerthana
- 3.Gokila
- 4.Vigneswaran
- 5.Dinesh
- 6.Kannaki
- 7.Megarajan
- 8.Elanchiyam

... Petitioners

Vs.

- 1.The State,
rep. By the Inspector of Police,
Thalavai Police Station,
Ariyalur District
(crime No.95 of 2019)
- 2.Perumal

... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records made in charge sheet CC.No.6 of 2020 on the file of the District Munsif cum Judicial Magistrate, Senthurai and to quash the same.

(crime number amended as per order dated 22.08.2023 in Crl.MP.No.12762 of 2023 in OP.No.5014 of 2021)



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For Petitioners

: Mr.M.Velmurugan

For Respondents

For R1

: Mr.A.Gopinath,
Government Advocate(Crl.side)

ORDER

This criminal original petition has been filed to quash the proceedings in CC.No.6 of 2020 on the file of the District Munsif cum Judicial Magistrate, Senthurai, as against the petitioners.

2. Heard, the learned counsel appearing on either side.

3. The case of the prosecution is that on 03.12.2019, at about 9 a.m., the accused persons attacked the defacto complainant / second respondent while he was coming on his two wheeler bearing registration No.TN 61E 2178 by their hands and legs. When the defacto complainant escaped from the hands of the accused and even then, the accused persons chased him and pulled him from his house and attacked him, thereby they caused injuries to the defacto complainant. On the complaint, the first respondent registered FIR for the offence under Sections 147, 427, 294(b), 323, 355, 506(i) & 352 of IPC and after completion of investigation, filed final report and the same has been



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taken cognizance in CC.No.6 of 2020 on the file of the District Munsif cum

Judicial Magistrate, Senthurai.

4. On perusal of records, on 28.07.2019, the second respondent herein stabbed the fifth petitioner by knife at about 7.45 p.m., due to which he sustained grievous injuries and on the complaint, the first respondent registered FIR in crime No.57 of 2019 for the offence under Sections 294(b), 324, 307 IPC. Thereafter, the second respondent was remanded to the judicial custody. Therefore, the present complaint is nothing but abuse of process of law and it was lodged maliciously with an ulterior motive for wrecking vengeance. For the very same occurrence, the petitioners also lodged complaint as against the second respondent and the same was registered in crime No.96 of 2019 for the offence under Sections 147, 427, 294(b), 323, 355, 506(i) & 352 of IPC and on investigation, they are to file final report as 'mistake of fact'. On the complaint lodged by the second respondent alone, the first respondent filed charge sheet and the same has been taken cognizance by the trial court in CC.No.6 of 2020. It is also seen that there was previous enmity between both the groups. That apart, on the occurrence, the second respondent had not sustained any injuries in order to attract offence under



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Section 323 of IPC and no doctor was examined and no records to show that he was treated in the hospital. Even according to the case of the prosecution, the vehicle was also damaged by the petitioners. However, the first respondent failed to seize the two wheeler and there is absolutely no evidence to show that the petitioners attacked the second respondent by their hands and legs. Therefore, the entire allegations are bald and vague.

5. To attract the offence under Section 294(b) of IPC, there must be an uttering of words to affect the person who lodged the complaint. In this regard it is relevant to extract the Section 294(b) of IPC, as follows :-

"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."

Admittedly, there is absolutely no words uttered by the petitioners as such to constitute the offence under Section 294(b) of IPC, there is no averments and allegations. Further the charges do not show that on hearing the obscene words, which were allegedly uttered by the petitioners, the witnesses felt



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annoyed. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the petitioners annoyed others, it can not be said that the ingredients of the offence under Section 294(b) of IPC is made out.

6. It is relevant to rely upon the judgment 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 therefore, the offence under Section 294(b) of IPC is not at all attracted as against the petitioners.

7. Insofar as the offence under Section 506(i) of I.P.C is concerned, to attract the offence, threat and intention to cause an alarm are main ingredients. The third ingredient is that the intention must be to cause any 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, subsequent to the main ingredients. Whereas in



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the case on hand, even according to the case of the prosecution, the alleged threats issued by the petitioners were only empty threats and they had no effect on the complainant.

8. In this regard, it is relevant to rely upon the judgment of this Court made in ***Crl.O.P.(MD)No.11030 of 2014*** in the case of ***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 506(i) of I.P.C. are not made out as against the petitioner herein



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

9. In view of the above, the impugned proceedings cannot be sustained against the petitioners and the same is liable to be quashed. Accordingly, the entire proceedings in CC.No.6 of 2020 on the file of the District Munsif cum Judicial Magistrate, Senthurai is quashed as against the petitioners and this criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

04.10.2023

Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order
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G.K.ILANTHIRAIYAN, J.



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To

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- 1.District Munsif cum Judicial Magistrate,
Senthurai
- 2.The Inspector of Police,
Thalavai Police Station,
Ariyalur District
- 3.The Public Prosecutor,
High Court of Madras

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