



Crl.O.P.No.17199 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.11.2023

CORAM:

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

Crl.O.P.No.17199 of 2019

and

Crl.M.P.No.8658 of 2019

P.K.Selvaraj

...Petitioner

-Vs-

1. State represented by
The Inspector of Police,
Paarur Police Circle,
Nagarasampatti Police Station,
Nagarasampatti-Post,
Krishnagiri-District.

2. K.P.Shanmugam

...Respondents

Prayer : Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, 1973, to call for the records in charge sheet in S.T.C.No.832 of 2018 for the offence under Section 294(b), 447 and 323 of IPC on the file District Munsif cum Judicial Magistrate, Pochampalli, Krishnagiri-District in pursuance of the Crime No.109 of 2015 on the file of the first respondent and quash the same.



Crl.O.P.No.17199 of 2019

For Petitioner : Mr.Veerasekharan.D
For R1 : Mr.L.Baskaran
Government Advocate (Crl.Side)
For R2 : No appearance

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.832 of 2018 on the file of the learned District Munsif cum Judicial Magistrate, Pochampalli, Krishnagiri-District.

2. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the first respondent and perused the materials available on record.

3. The case of the prosecution is that on 27.02.2015, at about 11.00 a.m, the accused trespassed into the defacto complainant's quarry and scolded in filthy languages. They also threatened the labourers to evict from the quarry within a period of two days. Hence, the complaint.



Crl.O.P.No.17199 of 2019

WEB COPY

4. On receipt of the complaint, the first respondent registered FIR in Crime No.109 of 2015 for the offence under Sections 147, 294(b), 447, 323 and 506(1) of IPC. After completion of investigation, the first respondent filed a final report and the same has been taken cognizance by the Trial Court in S.T.C.No.832 of 2018 for the offences under Sections 294(b), 323 and 447 of IPC.

5. A perusal of records revealed that the alleged occurrence had taken place on 27.02.2015. Whereas, the complaint was lodged only on 19.03.2015. There is no explanation by the defacto complainant for the belated complaint. It is also seen that the second respondent is the Managing Director of C.R.T.Granite Park. Its owner had entered into a raising cum sale-job agreement with the petitioner to take granite blocks from the quarry land for a period of five years from 27.09.2010 to 26.09.2015. Accordingly, the second respondent was allowed to carry out the work for extracting and cutting the granite blocks and removing for transportation. However, the petitioner had demanded for enhanced amount of Rs.1 Crore, to permit the second respondent to remove granite blocks from the lease land. In this regard, the second respondent had



Crl.O.P.No.17199 of 2019

WEB COPY

already filed a suit for permanent injunction as against the petitioner not to evict them from the quarry, except under due process of law, in O.S.No.184 of 2014 on the file of the District Munsif Court, Pochampalli, Krishnagiri District and it is pending. The second respondent also filed a writ petition before this Court in W.P.No.5493 of 2015 as against the petitioner seeking permission to dispatch orders, so as to enable to remove and transport the granite blocks. Therefore, the present proceedings is nothing but a clear abuse of process of law. The alleged occurrence had taken place on 27.02.2015, whereas, the complaint was lodged only on 19.03.2015. In fact, in the complaint itself, the second respondent had stated that there was negotiation and it was ended in failure and as such, he lodged a complaint. That apart, in order to attract the offences under Sections 294(b) and 323 IPC, no single piece of material produced by the prosecution in order to bring home the charges.

6. Admittedly, the petitioner is the owner of the land and the second respondent had entered into an agreement to carry on work for extracting and cutting the granite blocks. Therefore, there is no question



Crl.O.P.No.17199 of 2019

of trespass to attract the offence under Section 447 of IPC.

7. To attract the offences 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."

8. Admittedly, there is absolutely no words uttered by the petitioner 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 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. It is relevant to rely upon the judgment reported in **1996(1)**



Crl.O.P.No.17199 of 2019

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.

9. The essential ingredient to attract the offence under Section 323 of I.P.C is that any act with the intention of thereby causing hurt to any person or with the knowledge that he is likely thereby to cause hurt to any person. Therefore, there is no averment to attract the offence under Section 323 of I.P.C. It is relevant to extract the provisions under Section 323 of IPC as follows:-



Crl.O.P.No.17199 of 2019

WEB COPY

*“323. Punishment for voluntarily causing hurt —
Whoever, except in the case provided for by section 334,
voluntarily causes hurt, shall be punished with
imprisonment of either description for a term which may
extend to one year, or with fine which may extend to one
thousand rupees, or with both.”*

10. In view of the above, the entire proceedings in S.T.C.No.832 of 2018, on the file of the learned District Munsif cum Judicial Magistrate, Pochampalli, Krishnagiri-District cannot be sustained as against the petitioner and it is liable to be quashed.

11. Accordingly, the proceedings in S.T.C.No.832 of 2018 on the file of the learned District Munsif cum Judicial Magistrate, Pochampalli, Krishnagiri-District, is hereby quashed. This Criminal Original Petition is allowed. Consequently, connected Miscellaneous petition is closed.

06.11.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
mn



WEB COPY



Crl.O.P.No.17199 of 2019

G.K.ILANTHIRAIYAN. J.

mn

To

1. The District Munsif cum Judicial Magistrate,
Pochampalli, Krishnagiri-District.
2. The Inspector of Police,
Paarur Police Circle,
Nagarasampatti Police Station,
Nagarasampatti-Post,
Krishnagiri-District.
3. The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.17199 of 2019
and
Crl.M.P.No.8658 of 2019

06.11.2023