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Crl.O.P.No.25082 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.10.2023

Pronounced on : 08.11.2023

CORAM:

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

CRL.O.P.No.25082 of 2021 and
Crl.M.P.Nos.13812 & 13813 of 2021

- 1.Velmurugan
- 2.Saravanan
- 3.Nehru
- 4.Silambarasan
- 5.Maheswari

... Petitioners/A1 to 5

Vs.

- 1.The State rep. By
Inspector of Police,
Thittagudi Police Station,
Cuddalore District
(crime No.71 of 2017)
- 2.Jeevitha

... Respondents

PRAYER: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for records made in CC.No.64 of 2017 on the file of the learned Judicial Magistrate Court, Thittagudi and to quash the same as illegal.

For Petitioners

: Mr.R.Sankarasubbu



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Crl.O.P.No.25082 of 2021

For Respondents

For R1

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

For R2

: No appearance

ORDER

This criminal original petition has been filed to quash the proceedings in CC.No.64 of 2017 on the file of the learned Judicial Magistrate Court, Thittagudi taken cognizance for the offences under Sections 294(b), 324, 506(ii) of IPC and Section 4 of Tamilnadu Prohibition of Harassment of Women Act, 2002 as against the petitioners.

2. The case of the prosecution is that the first accused fell in love with the defacto complainant and got married in Samayapuram Mariamman Temple. Thereafter, they lived together as husband and wife for a period of three years. Since they got love marriage, the family members of the first accused i.e. the other accused persons objected their marriage and as such, as directed by the first accused, she was living in her parents' house. The first accused used to stay with her in her parents' house. Thereafter, he stopped from coming to her house. Thereafter on 25.03.2017, the defacto complainant and her sister went to his office at about 7 p.m. The accused persons attacked her



Crl.O.P.No.25082 of 2021

with wooden log. When her sister resisted them from attacking, she was also attacked by them. They also pulled their dress and threatened them with dire consequences. Hence, the complaint. On receipt of the said complaint, the first respondent registered FIR in crime No.71 of 2017 for the offences under Sections 294(b), 324, 506(ii) of IPC and Section 4 of Tamilnadu Prohibition of Harassment of Women Act, 2002. After completion of investigation, final report was filed and the same has been taken cognizance by the trial court in CC.No.64 of 2017.

3. The learned counsel for the petitioners would submit that a false complaint has been foisted as against the petitioners. There was previous enmity between the first petitioner and the first respondent. In so many cases, the first accused appeared for their clients as against the first respondent. Due to which, the first respondent instigated the second respondent and foisted the present false case. No such occurrence was happened and in fact, even according to the second respondent, occurrence had taken in the office of the first petitioner. In the office, no other relatives were available. He also produced so many FIR's registered as against the first accused's clients, in which he appeared before the court for bail and trial.

3.1 He further submitted that even according to the second



Crl.O.P.No.25082 of 2021

respondent, no injuries sustained by her and no medical records available in

order to substantiate the charge under Section 324 of IPC. Insofar as the offences under Sections 294(b) and 506(ii) of IPC, they are not made out since there was no life threat made by the petitioners. They never scolded them with filthy languages in the public place. The first respondent foisted the false case with *malafide* intention. In support of his contention, he relied upon the judgment of the Hon'ble Supreme Court of India in the case of ***Mahmood Ali and others Vs. State of UP and others*** reported in ***2023 LiveLaw (SC) 613***, in which the Hon'ble Supreme Court of India held that in frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the cases over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of Cr.P.C. or Article 226 of the Constitution of India need not register itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation of the case as well as the materials collected in the course of investigation.

3.2 He also relied upon the judgment in the case of ***N.Mohamed***



Crl.O.P.No.25082 of 2021

Farook and others Vs. State of and Others reported in **MANU/TN/2742/2022**,

wherein this Court held as follows:

12.Insofar as the offence under Section 294(b) is concerned, the words used must involve some lascivious elements arousing sexual thoughts or feelings or the words must have the effect of depraving persons and defiling morals by sex appeal or lustful desires. 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 obscence 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."

On a perusal of the entire F.I.R, there are no such allegations to attract the offence under Section 294(b) of I.P.C.

13.The essential ingredient to attract the offence under Section 323 of I.P.C is that any act with an intention of thereby causing hurt to any person or with the knowledge that he is likely thereby to cause hurt to any person. In the case on hand, there is no averment to attract the offence under Section 323 of I.P.C.

14.In order to attract the offence under Section 506(i) of I.P.C is concerned, the intention of the accused



must be to cause alarm to 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](#) of I.P.C. The threat should be a real one and not just a mere word when the person uttering does not exactly mean that what he says and also when the person against whom the threat is launched, does not feel threatened actually. Further, it should appear that the complainant was feeling fear of his life.

4. On perusal of records and the statements recorded under Section 161 of Cr.P.C., revealed that the second respondent got married with the first petitioner. They lived together in the matrimonial house as husband and wife. Thereafter, she was driven out from the matrimonial house by the first accused. However, the first accused used to come and see the second respondent in her parents' house and stayed there for some time. After some time, he stopped from coming to her house and refused to take care of her. Therefore, on 25.03.2017 at about 07.00 p.m., the second respondent and her sister went to his office cum residence. The second respondent questioned the first accused and immediately he abused her with filthy language and also attacked her with wooden log. When her sister came to rescue her, she was also attacked by all



CrI.O.P.No.25082 of 2021

the accused persons. The presence of the other accused persons is also clearly proved from the statements and they are having specific overt act to attract the offences under Sections 294(b), 324, 506(ii) of IPC and Section 4 of Tamilnadu Prohibition of Harassment of Women Act, 2002. They also pulled her dress and threatened them with dire consequences in the public place. Another victim i.e. the sister of the second respondent also corroborated the statement of the second respondent. The independent witnesses also categorically deposed about their specific overt act and their previous relationship. Immediately after the occurrence, the second respondent and her sister went to Government Hospital, Cuddalore District. The accident register was recorded by the duty doctor. On perusal of accident register, the second respondent and her sister categorically stated that they were assaulted by the accused persons by wooden log. Therefore, there are specific allegations as against all the petitioners to attract the offences under Sections 294(b), 324, 506(ii) of IPC and Section 4 of Tamilnadu Prohibition of Harassment of Women Act, 2002.

5. The learned counsel for the petitioners specifically contended that only because of previous enmity between the first petitioner and the first



Crl.O.P.No.25082 of 2021

respondent, a false case has been foisted against all the family members.

However, on perusal of other records related to the present case, revealed that there are specific overt act as against each petitioner and therefore, the grounds raised by the petitioners cannot be considered here to quash the entire proceedings. That apart, the documents which were produced before this Court in order to prove the enmity between the first petitioner and the first respondent, can be considered only before the trial court during the trial. It cannot be decided here by conducting rowing enquiry.

6. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in ***Crl.A.No.579 of 2019*** dated ***02.04.2019*** in the case of ***Devendra Prasad Singh Vs. State of Bihar & Anr.***, wherein it is held as follows:-

" 12.So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this



Crl.O.P.No.25082 of 2021

could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

7. The Hon'ble Supreme Court of India dealing in respect of the very same issue in ***Crl.A.No.1572 of 2019*** dated 17.10.2019 in the case of ***Central Bureau of Investigation Vs. Arvind Khanna***, held as follows:

“19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most



minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for.”

8. Further, the Hon'ble Supreme Court of India also held in the order dated **02.12.2019** passed in **Crl.A.No.1817 of 2019** in the case of **M.Jayanthi Vs. K.R.Meenakshi & anr**, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied



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Crl.O.P.No.25082 of 2021

with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

9. In view of the above discussion, this Court is not inclined to quash the proceedings in CC.No.64 of 2017 in Crime No.71 of 2017 on the file of the learned Judicial Magistrate Court, Thittagudi. However, the petitioners are at liberty to raise all the grounds before the trial Court. Further, the personal appearance of the petitioners is dispensed with and they shall be represented by a counsel after filing appropriate application. However, the petitioners shall be present before the Court at the time of furnishing of copies, framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. The trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.



Crl.O.P.No.25082 of 2021

WEB COPY 10. Accordingly, this criminal original petition is dismissed.

Consequently, connected miscellaneous petitions are also closed.

08.11.2023

Index : Yes/No

Internet : Yes/No

Speaking order/non-speaking order
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Crl.O.P.No.25082 of 2021

To

WEB COPY

- 1.The learned Judicial Magistrate Court,
Thittagudi
- 2.Inspector of Police,
Thittagudi Police Station,
Cuddalore District
- 3.The Government Advocate,
High Court of Madras

G.K.ILANTHIRAIYAN, J.



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CrI.O.P.No.25082 of 2021

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CRL.O.P.No.25082 of 2021

08.11.2023