



Crl.O.P.No.20823 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.20823 of 2019

and

Crl.M.P. No.10698 of 2019

1.Govindan

(As per order in Crl.O.P.No.20223 of 2019 and Crl.M.P.No.10698 and 10699 of 2019 dated 02.08.2019. This petition is dismissed in so far as the 1st petitioner is concerned.)

2.Muniraj

3.Chandira

4.Sivaraj

5.Amala

6.Durai Murugan

... Petitioners/Accused 1 to 6

Versus

1.The State Rep., by the
Inspector of Police
All Women Police Station,
Burgur
Krishnagiri District.



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2.Ishwarya

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records pending on the file of the Learned Judicial Magistrate, Uthangarai, Krishnagiri District in C.C.No.124 of 2019 and quash the Criminal Proceedings.

For Petitioners : Mr.Kannadasan E

For R1 : Mr. A.Damadoran
Additional Public Prosecutor.

For R2 : No Appearance

ORDER

This Criminal Original Petition has been filed to call for the records pending on the file of the learned Judicial Magistrate, Uthangarai, Krishnagiri District, in C.C.No.124 of 2019 and quash the criminal proceeding.

2.This petition has been filed by six accused in C.C.No.124 of 2019. At the time of admission, this Court dismissed the quash petition as against A1 and



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issued notice to the respondents, in so far as A2 to A6. Though, notice was served on the second respondent, there is no representation for the second respondent.

3.The allegations in the charge sheet is that defacto complainant and A1 namely M.Govindan got married on 22.02.2017 and; difference of opinion arose between them since the de-facto complainant came to know that the first accused was living with his sister's daughter and refused to live with the defacto complainant. The allegation is that on 09.04.2017, all the accused had abused the defacto complainant with vulgar words when the defacto complainant went to the house of the accused; that on 19.10.2018, the first accused married another girl and committed the offence under Section 494 I.P.C., and the other accused abetted the said bigamous marriage; that all the accused had threatened the defacto complainant stating that she would be done to death and; that A2 to A6 had prevented A1 from living with the defacto complainant and hence liable for the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002.



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4.The learned counsel for the petitioners submitted that none of the offence are made out as against the petitioners/A2 to A6. The trial against A1 is pending before the Jurisdictional Magistrate. The alleged occurrence, constituting the offence under Section 294 (b) of I.P.C., had taken place on 09.04.2017 and the complaint was lodged two years later on 08.03.2019. Earlier A1, through his learned counsel had issued a legal notice on 06.10.2017 and that had triggered this false complaint. He submitted that the respondent police has no jurisdiction to file a final report for an offence under Section 494 of I.P.C., and the learned Magistrate can take cognizance for the offence under Section 494 I.P.C., only on the complaint of the defacto complainant. As regards the offence under Section 506(1) of I.P.C., the learned counsel submitted that the mere words of threat cannot constitute offence under Section 506 (1) of I.P.C., unless there is a real threat. There is no indication in the charge sheet to suggest as to what was the real threat given to the defacto complainant. He further submitted that as regards the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 2002, the only allegation is that A2 to A6 prevented A1 to join with the defacto complainant and this would not constitute the offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002.



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5.The learned Additional Public Prosecutor submitted that a reading of the statement of the defacto complainant would suggest that all the offences against the accused are made out. The defacto complainant/second respondent has also given reasons as to why she had given the complaint belatedly. The learned Additional Public Prosecutor further submitted that the allegations also constitute the offence under Section 506 (1) of I.P.C., and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002.

6.Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor appearing for the first respondent.

7.This Court on perusal of the impugned final report finds that the respondent police has filed a final report for the offence under Section 494 of Indian Penal Code as well. Under Section 198 of Criminal Procedure Code, no Court shall take cognizance for the offence punishable under Chapter XX of Indian Penal Code except upon complaint made by some person aggrieved by the offence. The aggrieved person is the defacto complainant and the respondent



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police cannot file a final report in respect of the offence under Chapter XX of Indian Penal Code. Hence, the order taking cognizance of the offence under Section 494 I.P.C., is erroneous.

8.As regards, offence Section 294 (b) of I.P.C., the alleged occurrence took place on 09.04.2017. The FIR was registered only on 08.03.2019. There is force in the submission of the petitioner that the final report for the offence under Section 294(b) I.P.C., is barred by limitation. The punishment prescribed for the offence under Section 294 (b) of I.P.C., is only three months. The learned Magistrate ought not to have taken cognizance beyond the period of one year from the date of occurrence. No doubt, Section 469 (3) Criminal Procedure Code provides that if the offence can be tried with other offences with more severe punishment, the period of limitation has to be determined on the basis of offence with more severe punishment. However, this Court finds that the alleged occurrence relating to the offence of Section 294 (b) I.P.C., took place on 09.04.2017. The other offences took place later. The offence relating to the said occurrence cannot be tried with the offences that took place later. That offence can only be charged and tried separately and would not fall within the exceptions



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provided in Section 219 to 222 Cr.P.C., for joinder. Hence, since the offence under Section 294 (b) I.P.C., was committed in an independent occurrence, the final report for this offence is barred by limitation.

9.As regards the offence under Section 506 (1) of I.P.C., the words uttered do not constitute the offence under this provision. It is settled law that in order to constitute the offence of Criminal intimidation, there must be a real threat. Further, it is not also stated as to what were the exact words uttered by A2 to A6. The chargesheet proceeds on the basis that they had in unison threatened which appears to be highly improbable and false.

10.The only allegation for the offence under Section 4 of Tamil Nadu Prohibitions of Women Harassment Act, 2002 is that A2 to A6 prevented A1 from living with the defacto complainant. This allegation would not constitute the offence under Section 4 of Tamil Nadu Prohibitions of Women Harassment Act, 2002 by any stretch of imagination.



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11.This appears to be a dispute between the defacto complainant and her husband namely A1. The other accused have been roped in to wreak vengeance as could be seen from the chargesheet and other materials on record.

12.This Court finds that the impugned chargesheet is liable to be quashed as against A2 to A6. However, the learned Judicial Magistrate, Uthangarai, Krihnagiri is directed to proceed with the trial as regards A1 and complete the process of trial as expeditiously as possible.

13.Accordingly, the Criminal Original Petition is allowed in so far as A2 to A6 in C.C.No.124 of 2019. Consequently, the connected miscellaneous petition is closed.

06.03.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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To

1.The Judicial Magistrate
Uthangarai,
Krishnagiri District.

2.The Inspector of Police
All Women Police Station,
Burgur
Krishnagiri District.

3.The Public Prosecutor
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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