



Crl.O.P(MD).No.5402 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 08.09.2023

CORAM:

THE HONOURABLE MR. JUSTICE P. DHANABAL

Crl.O.P(MD).No.5402 of 2021

and

Crl.M.P.(MD)Nos.3124 and 3125 of 2021

1.Ajith Bright

2.Ajin Jose

3.Flawarence Punitha

4.Pathross

5.Soosaiyammal

...Petitioners

Vs

1.The Sub Inspector of Police,
Nesamani Nagar Police Station,
Kanyakumari District.

2.Vimala

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records in connection with the charge sheet in C.C.No.17 of 2021 on the file of the Additional Mahila Court, Nagercoil and quash the same.

For Petitioners

: Mr.R.Russel Raj

For R-1

: Mr.R.M.Anbunithi
Additional Public Prosecutor

For R-2

: Mr.M.P.Senthil

ORDER

This petition is filed to quash the charge sheet in C.C.No.17 of 2021 on the file of the Additional Mahila Court, Nagercoil.



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2. According to the petitioners, based on the complaint given by the second respondent, the first respondent registered a case in Crime No.412 of 2020 for the offence under Sections 147, 149, 294(b), 427, 506(i) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act.

3. The prosecution case is that the petitioners 1 and 2 are the sons of the third petitioner, the third petitioner is the sister-in-law of the defacto complainant, the petitioners 4 and 5 are father-in-law and mother-in-law of the defacto complainant. The husband of the defacto complainant working in abroad. The petitioners 4 and 5 are living with the defacto complainant and on 08.07.2020 at about 09.45 a.m., the petitioners 1 and 2 smashed and vandalized the CCTV cameras kept in the defacto complainant's house at the instigation of the third petitioner and also the petitioners 4 and 5 at the instigation of third petitioner cut off the electric wires with the intention of killing the defacto complainant and her children. On 12.07.2020 at about 03.00 p.m., the petitioners 4 and 5 scolded the defacto complainant and the person who came to do the electrical work by using filthy language and also attempted to attack them with stick. Based on the complaint given by the second respondent, the first respondent registered the FIR in Crime No.412 of 2020. After investigating the case, the first respondent filed



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final report. The learned Judge, Additional Mahila Court, Nagercoil has taken cognizance in C.C.No.17 of 2021 for the offence under Sections 147, 149, 294(b), 427, 506(i) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act. In fact the petitioners have not committed any offence as alleged in the FIR and charge sheet and in this case, as per prosecution, two occurrences were happened in two different dates. Both have clubbed together and not any unlawful assembly of five or more persons to attract Section 147 of IPC.

4. Even according to the FIR, the alleged occurrence took place in private house and hence, Section 294(b) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act would not attract. As per Section 427 of IPC, there is no any eye witness. The petitioners and the defacto complainant were not present at the occurrence. Only based on the assumption, the complaint was given. In order to attract offence under Section 506(i) of IPC, there is no life threat to the defacto complainant and the aforesaid averments made in the complaint is vague and not specific. Further the defacto complainant is none other than the daughter-in-law of the petitioners 4 and 5 and sister-in-law of the third petitioner. Due to family dispute, the defacto complainant has given a false complaint and without proper investigation, the first respondent has filed charge sheet. Hence, the charge sheet in C.C.No. 17 of 2021 is liable to be quashed.



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5.No counter was filed by the respondents.

6.The learned counsel appearing for the petitioners has argued that the defacto complainant is none other than the daughter-in-law of the petitioners 4 and 5, the petitioners 1 and 2 are the sons of the third petitioner, third petitioner is the sister-in-law of the defacto complainant and the husband of the defacto complainant is working in abroad. Now the defacto complainant is residing with the petitioners 4 and 5. Due to family dispute between the petitioners and the defacto complainant, she lodged a false complaint alleging that the petitioners abused in filthy language and caused criminal intimidation and also damaged the CCTV cameras installed in the house. Even according to the prosecution, the occurrence was took place in two different dates and one occurrence was taken place on 08.07.2020 and in that occurrence, the petitioners 1 and 2 alone involved based on the instigation of the third petitioner and the second occurrence was taken place on 12.07.2020 and in that occurrence, the petitioners 4 and 5 alone involved. While so the offence under Sections 147, 149 of IPC would not attract. Even according to the complaint and prosecution case, the occurrence took place in the private place I.e. residential house of the defacto complainant and thereby, the offence under Section 294(b) of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act would not attract. As per



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Section 427 of IPC is concerned, there is no eye witness and the defacto complainant also not present in the place of occurrence. Only based on the assumption, the petitioners name were mentioned. As far as the Section 506(i) of IPC is concerned, there is no ingredients to attract the provisions and there is no real threat. Therefore, the police officials without proper investigation filed a final report. Thereby, the charge sheet is liable to be quashed.

7. The learned counsel appearing for the second respondent would contend that the second respondent is none other than the daughter-in-law of the petitioners 4 and 5, the petitioners 1 and 2 are the sons of the third petitioner, third petitioner is the sister-in-law of the defacto complainant. Due to family dispute all the petitioners abused obscene words and also threatened the petitioner and they damaged the CCTV camera worth about Rs.7500/- and there are eyewitnesses to the said occurrence and as such the respondent police filed final report and thereby the petition filed by the petitioner at this stage is not maintainable and they have to face the trial before the trial Court and hence the petition is liable to be dismissed.

8.The learned Additional Public Prosecutor appearing for the first respondent contended that the Investigating Officer examined nine witnesses and the witnesses have stated about the involvement of the



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accused and all the offences are based on the materials collected by the first respondent. They filed final report before the Additional Mahila Court, Nagercoil and after satisfying *prima facie* materials available against the petitioner, the learned Judge, Additional Mahila Court, Nagercoil has taken cognizance in C.C.No.17 of 2020 and the same is pending. Since *prima facie* materials are available against the petitioners, they have to face the trial and thereby, the petition is liable to be dismissed.

9.The learned Additional Public Prosecutor brought to the knowledge of this Court that the fifth petitioner during the pendency of the petition died and the same is recorded.

10.Heard both sides and perused the materials available on records.

11.On perusal of the records, it is admitted fact that the defacto complainant is none other than the daughter-in-law of the petitioners 4 and 5, the third petitioner is the sister-in-law and the petitioners 1 and 2 are the sons of the third petitioner. As per the prosecution case, the occurrence took place on 08.07.2020, at about 09.45 a.m., at that time, the petitioners 1 and 2 damaged the CCTV cameras at the instigation of the third petitioner. Thereafter, the occurrence took place on



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08.07.2020, at about 03.30 p.m., at that time, the petitioners 4 and 5 scolded the defacto complainant and the person who came to do the electrical work by using filthy language and also threatened to attack them with stick. Therefore, on the aforesaid occurrences taken place on the instigation of the third petitioner. Obviously there is no piece of material to implicate the third petitioner as accused in this case.

12. So far as offence under Sections 294(b) of IPC and Section 4 of TNPHW Act are concerned the offence took place in the house and in order to attract the provisions under Section 294(b) of IPC the words uttered in or around the public place but the occurrence took place in the house. Therefore the offence under Sections 294(b) of IPC and Section 4 of TNPHW Act would not attract. So far as offence under Section 147 of IPC is concerned the occurrence took place in two different dates and on the first date of occurrence only two persons involved in this case and in the second occurrence three persons only involved in the case. Therefore in order to attract the provisions under Section 147 of IPC five or more persons have to be involved in the occurrence but in this regard there is no record to show that five or more persons involved in the said occurrence. Admittedly in two different dates only below five members involved in this case. Therefore the offences under Sections 147 of IPC will not attract. However as contended by the second respondent there are some materials



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available to attract the provisions under Section 427 of IPC. As per prosecution case the first and second petitioners namely the fourth and fifth accused only damaged the above said CCTV camera, therefore the petitioners 1 and 2 have to face the trial since prima facie case available as against them. So far as petitioners 3 to 5 are concerned there are no materials available as against them and the fifth petitioner died during pending this petition, thereby this Court is inclined to quash the charge sheet as against petitioners 3 and 4.

13. Accordingly this Criminal Original Petition is partly allowed and the proceedings in C.C.No.17 of 2021 on the file of the Additional Mahila Court, Nagercoil is hereby quashed in so far as the petitioners 3 and 4 alone. As regards the petitioners 1 and 2 the petition stands dismissed. Since the fifth petitioner died charge abated as against him. The petitioners 1 and 2 are at liberty to approach the trial Court by way of filing discharge petition if any *prima facie* ground available to discharge for other offences. Consequently connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes / No
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To
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1. The Sub Inspector of Police,
Nesamani Nagar Police Station,
Kanyakumari District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P.DHANABAL, J.

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