BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.03.2023

Delivered on : 02.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.5963 of 2019
and
Crl.M.P.(MD)No.5963 of 2019

1. Pitchaiyammal
2. Petchimuthu
3. Arumuganainar
4. Sudalaimani
5. Ganesan
6. Saraswathi
7. Jeyalakshmi
8. Jeyaraman
9. Paramasivan ... Petitioners/ Accused Nos. 1 to 9

vs.

1.The Inspector of Police,
Thattarmadam Police Station,
Thoothukudi District.
(Crime No.97 of 2017) ... Respondent/ Complainant

2.K.Mariappan ... Second Respondent/ De facto Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records relating to the impugned FIR in Crime No.97 of 2017 on the file of the first respondent and quash the same.

For Petitioners : Mr.D.S.Haroon Rasheed

For R1 : Mr.SS.Madhavan
Government Advocate (Crl. Side)

For R2 : Mr.G.Mohankumar

O R D E R

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records relating to the First Information Report in Crime No.97 of 2017 pending on the file of the first respondent police and quash the same.

2. The petitioners are the accused 1 to 9 in Crime No.97 of 2017 on the file of Thattarmadam Police Station, Thoothukudi District.

3. On the basis of the direction issued by the learned Judicial Magistrate, Sathankulam, in pursuance of the complaint lodged by the

second respondent/defacto complainant under Section 156(3) Cr.P.C., FIR came to be registered in Crime No.97 of 2017 dated 09.08.2017 against the petitioners herein for the offences under Sections 294(b), 506(2) and 420 IPC.

4. The case of the prosecution is that Arulmigu Bathriamman Temple in the second respondent's village was a private temple and the same was built by predecessors of the second respondent 200 years ago, that the said temple is an ancestral temple and only male members are having right to maintain and administer the temple, that the first petitioner, who is a neighbor to the said temple, had encroached upon some portion of the temple property and obtained patta in her name, that when the same was questioned by the second respondent, the first petitioner had agreed to give up the lands she encroached and in pursuance of the said promise, she conveyed one portion of the land in favour of the temple and assured that she would convey the remaining property at later point of time, that since the first petitioner interfered with the temple administration, the second respondent filed a suit in O.S.No.44 of 2007 and after dismissal of the said suit, filed an appeal in A.S.No.32 of 2011 and obtained permanent injunction, that subsequently, the second respondent and the petitioners have entered into a

compromise and as per the terms of the compromise, the first petitioner has agreed to register the balance portion of the temple property and entered into an unregistered sale agreement dated 18.07.2012 and received a sum of Rs.4,00,000/-, that the petitioners have failed to execute the sale deed as agreed by them and that when the same was questioned by the second respondent, the petitioners had threatened him with dire consequences.

5. Admittedly, the first petitioner/first accused is the mother and the petitioners 2 to 5, 8 and 9/accused 2 to 5, 8 and 9 are the sons and the petitioners 6 and 7/accused 6 and 7 are the daughters of the first petitioner/first accused.

6. The case of the petitioners is that the land in dispute was originally belonging to one Sankaranarayanan, husband of the first petitioner and father of the other petitioners, that after the death of the said Sankaranarayanan, the petitioners have become the owners of the said property and are having the possession and enjoyment of the same, that the second respondent is the son of the first petitioner's cousin brother and is a close relative to the petitioners, that when the disputes arose between the petitioners and the second respondent with regard to

the temple and surrounding lands, the second respondent filed a suit in O.S.No.44 of 2007 on the file of the District Munsif Court, Sathankulam and the same was dismissed on 20.01.2010, that an appeal filed in A.S.No.32 of 2011 on the file of the Additional District Court, Thoothukudi was partly allowed and an order of injunction against the first petitioner for not to obstruct the temple festival was granted and the prayers for declaration and recovery of possession claimed by the second respondent were negatived, that the second respondent has lodged a complaint, as if, the petitioners have received sale consideration of Rs.4,00,000/- from the second respondent and failed to execute a sale deed as per the unregistered sale agreement dated 18.07.2012, that after the expiry of the period agreed for performance, the second respondent ought to have approached the competent civil Court claiming the reliefs for specific performance or for the refund of the alleged amount given by him and that the second respondent, without taking any civil action, by including criminal averments and by lodging the above complaint, had been attempting to give criminal color for the civil dispute.

7. The learned counsel appearing for the petitioners would contend that though the alleged sale agreement was executed on 18.07.2012, the impugned FIR came to be registered only on 09.08.2017 and that too in

pursuance of the direction given by the learned Judicial Magistrate, Sathankulam, that the second respondent before approaching the Judicial Magistrate Court has preferred a complaint before the first respondent only on 11.11.2015, after the expiry of the sale agreement period and that therefore, the second respondent caused a huge delay for choosing a forum and he had intentionally invoked criminal jurisdiction to overlook his default in filing the suit for specific performance. He would further contend that there are no specific averments and no specific date was mentioned in the complaint when the occurrence was taken place and what are the obscene words used by the petitioners towards the second respondent and that therefore, there is no basis for penal sections of 294(b) and 506(2) IPC. He would further contend that mere empty threats does not constitute an offence under Section 506(2) IPC and that the entire allegations made by the second respondent are false and vague and as such, the impugned FIR is liable to be set aside.

8. It is not in dispute that Arulmigu Bathriamman Kovil represented by its then Akthar-cum-Manager K.Shanmuga Sundaram Chettiar has filed a suit in O.S.No.44 of 2007 claiming the reliefs for declaration and recovery of possession in respect of the properties shown as items B, C and D of the suit properties and to grant permanent

injunction in respect of the property in item E of the suit properties and that after full trial, the learned District Munsif, vide judgment dated 20.01.2010, dismissed the original suit. Aggrieved by the dismissal of the suit, the plaintiff has preferred an appeal in A.S.No.64 of 2010 on the file of the Subordinate Court, Thoothukudi and that subsequently, the same was transferred to the Additional District Court, Fast Track Court No.II, Thoothukudi in A.S.No.32 of 2011. The learned Appellate Judge, upon considering the materials available on record and on hearing the arguments on both the sides, has passed the judgment and decree dated 19.08.2011 partly allowing the appeal and modifying the judgment and decree of the trial Court to the extent that the appellant/plaintiff was entitled to the injunction as prayed for and in respect of the other aspects, the judgment and decree of the trial Court was confirmed.

9. As rightly contended by the learned counsel appearing for the petitioners, permanent injunction alone was granted to the plaintiff against the defendant/first petitioner not to obstruct the celebration of Varuisabisagam by preventing the performance of Yagam in the E schedule of the suit property and the prayers seeking declaration and recovery of possession in respect of the other 3 items of the property was rejected.

10. It is also not in dispute that the first petitioner had already executed a sale deed in respect of some portion of the property in favour of the temple.

11. As already pointed out, it is the specific case of the second respondent that after the disposal of the appeal suit, they entered into a compromise, wherein, the petitioners had agreed to receive Rs.4,00,000/- and execute a sale deed in respect of the remaining property, that since there occurred a delay in taking the sale deed, the petitioners have executed a power of attorney deed dated 06.08.2012 in favour of the second respondent, that subsequently, they had received Rs.4,00,000/- on 18.09.2012 by executing payment receipt therefor, that the demands made by the second respondent to the petitioners for executing the sale deed were of no avail, that all the petitioners had conspired and cheated the second respondent by receiving the entire amount and that when the same was questioned, the petitioners had abused the second respondent in filthy language and caused criminal intimidation and hence, he was forced to lodge the above complaint.

12. As rightly contended by the learned counsel appearing for the petitioners, the competent civil Court has already decided that the second

respondent's side has failed to prove the title in respect of the B, C and D schedules of the suit properties. Even assuming for arguments sake that the second respondent and the petitioners have entered into a sale agreement and the petitioners have failed to perform their part of contract even after the receipt of the entire sale consideration, the remedy open to the second respondent is to file a suit for specific performance of the agreement or for refund of the amount allegedly paid to the petitioners.

13. According to the petitioners, the period of performance fixed in the alleged sale agreement is the period between 18.07.2012 and 10.08.2012, but the second respondent, without exhausting the civil remedy available to him, has lodged the police complaint in 2015 and thereafter, filed the petition under Section 156(3) Cr.P.C. and in pursuance of the direction issued by the learned Judicial Magistrate, FIR came to be registered on 09.08.2017.

14. At this juncture, it is necessary to refer the judgment of the Hon'ble Supreme Court reported in ***AIR 2021 SC 5298 (Mithesh Kumar J.Sha, Vs. State of Karnataka and others,*** wherein, the Hon'ble Apex Court by referring its earlier judgments has held as follows:-

"41. Having considered the relevant arguments of the parties and decisions of this court we are of the considered view that existence of dishonest or fraudulent intention has not been made out against the Appellants. Though the instant dispute certainly involves determination of issues which are of civil nature, pursuant to which Respondent No. 2 has even instituted multiple civil suits, one can by no means stretch the dispute to an extent, so as to impart it a criminal colour. As has been rightly emphasised upon by this court, by way of an observation rendered in the case of M/s Indian Oil Corporation Vs. M/s. NEPC India Ltd & Ors.7, as under :-

> *14. While no one with a legitimate cause or grievance should be prevented from seeking remedies available in criminal law, a complainant who initiates or persists with a prosecution, being fully aware that the criminal proceedings are unwarranted Mitesh Kumar J Sha vs The State Of Karnataka on 26 October, 2021 Indian Kanoon - http://indiankanoon.org/doc/118326933/ 10 and his remedy lies only in civil law, should him self be made accountable, at the end of such 7. (2006) 6 SCC 736 misconceived criminal proceedings, in accordance with law.*

42. It was also observed:-

13. While on this issue, it is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on *account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors.There is also an impression that if a person could somehow be entangled in a criminal prosecution, there is a likelihood of imminent settlement. Any effort to settle civil disputes and claims, which do not involve any criminal offence, by applying pressure though criminal prosecution should be deprecated and discouraged.*

43. On an earlier occasion, in case of G. Sagar Suri and Anr. Vs. State of UP and Ors.8, this Court has also observed:-

8. Jurisdiction under Section 482 of the Code has to be exercised with a great care. In exercise of its jurisdiction High Court is not to examine the matter superficially. It is to be seen if a matter, which is essentially of civil nature, has been given a cloak of criminal offence. Criminal proceedings are not a short cut of other remedies available in law. Before issuing process a criminal court has to exercise a great deal of caution. For the accused it is a serious matter. This Court has laid certain principles on the basis of which High Court is to exercise its jurisdiction under Section 482 of the Code. Jurisdiction under this Section has to be exercised to prevent abuse of the process of any court or otherwise to secure the ends of justice.

......

46. Recently, this Court in case of Randheer Singh Vs. The State of U.P. & Ors.10, has again reiterated the long standing principle that criminal proceedings must not be used as instruments of harassment. The court observed as under:-

33. ....There can be no doubt that jurisdiction under Section 482 of the Cr.P.C. should be used sparingly for the purpose of preventing abuse of the process of any court or otherwise to secure the ends of justice. Whether a complaint discloses criminal offence or not depends on the nature of the allegation and whether the essential ingredients of a criminal offence are present or not has to be judged by the High Court. There can be no doubt that a complaint disclosing civil transactions may also have a criminal texture. The High Court has, however, to see whether the dispute of a civil nature has been given colour of criminal offence. In such a situation, the High Court should not hesitate to quash the criminal proceedings as held by this Court in Paramjeet Batra (supra) extracted above.

47. Moreover, this Court has at innumerable instances expressed its disapproval for imparting criminal color to a civil dispute, made merely to take advantage of a relatively quick relief granted in a criminal case in contrast to a civil dispute. Such an exercise is nothing but an abuse of the process of law which must be discouraged in its entirety."

15. The above decision is clearly applicable to the present case. In the case on hand also the second respondent, after losing the legal battle

before the civil Court and without exhausting the civil remedy with regard to the alleged sale agreement, with sole intention to give criminal color to the civil dispute, has lodged the above complaint.

16. Now turning to the offence under Section 420 IPC, that in order to make out a case against a person for the offence under Section 420 IPC, there must be a dishonest inducement to deceive a person to deliver any property to any other person. As per Section 420 IPC, whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, can be said to have committed an offence under Section 420 IPC. To put it in other way, in order to establish the offence of cheating, it is necessary to prove that there was a deception and inducement and that the accused had a fraudulent or dishonest intention. Though the second respondent has alleged that all the accused had conspired together and snatched his money by committing cheating, there are no allegations that there was dishonest inducement and he has deceived to deliver the property and that there was dishonest or fraudulent intention even from the very beginning of the transactions.

17. Regarding the offence under Section 506(2) IPC, it is necessary to refer the judgment of the Hon'ble Supreme Court in ***Manik***

Taneja and another Vs. State of Karnataka and another reported in **2015 7 SCC 423,**

11. Section 506 IPC prescribes punishment for the offence of criminal intimidation. "Criminal intimidation" as defined in Section 503 IPC is as under:-

"503. Criminal Intimidation.- Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that 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, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation.- A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section."

A reading of the definition of "Criminal intimidation" would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.

12. In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of "Criminal intimidation". The threat must be with intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the minds of the second respondent causing obstruction in discharge of his duty. As far as the comments posted on the Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of appellants posting a comment on the Facebook may not attract ingredients of criminal intimidation in Section 503 IPC."

18. In the present case, the second respondent has alleged that when the petitioners were questioned, the petitioners by informing that they would not execute any document, had abused the second respondent

in filthy language and caused criminal intimidation and that the petitioners 5, 8 and 9, sons of the first petitioner had threatened the second respondent and his family with dire consequences. Except the above averments, the second respondent has not elaborated anything further. The complaint has not shown that the intention of the petitioners was to cause alarm to him and his family. Moreover, to attract Section 506 IPC, threat should be the real one. It is not the specific case of the second respondent that the second respondent and his family members were criminally intimidated.

19. Now turning to the offence under Section 294(b) IPC, as already pointed out, the second respondent has vaguely alleged that the petitioners had abused him in filthy language. Admittedly, the second respondent has not mentioned the abusive or filthy words allegedly used by the petitioners. The Kerala High Court in **Latheef Vs. State of Kerala** reported in **2014 (2) KLT 987** relying on the earlier judgements of Kerala High Court has held that abusive words or humiliating words or defamatory words will not as such amount to obscenity as envisaged in Section 292 and 294 (b) IPC and that to make it punishable under Section 294(b) of IPC, the alleged words must be in a sense lascivious, or it must be appeal to the prurient interest, or will deprave or corrupt persons.

20. In the absence of words allegedly used, the question of considering as to whether the words will satisfy the definition of obscenity so as to attract the offence under Section 294(b) IPC does not arise at all.

21. Considering the above, even going by uncontraverted allegations in the FIR, none of the ingredients of the offence under Section 294(b), 506(2) and 420 IPC are satisfied. Hence, this Court concludes that the continuation of the impugned prosecution is not warranted and as such, the impugned proceedings are liable to be quashed.

22. In the result, this Criminal Original Petition is allowed and the impugned FIR in Crime No.97 of 2017 on the file of the first respondent is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

02.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
csm

K.MURALI SHANKAR, J.

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To

1.The Inspector of Police,
Thattarmadam Police Station,
Thoothukudi District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery order made in
Crl.O.P.(MD)No.5963 of 2019
and
Crl.M.P.(MD)No.5963 of 2019

Dated : 02.06.2023