



CrI.O.P.(MD)No.10972 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 23.06.2023

Delivered on : 05.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CrI.O.P.(MD)No.10972 of 2020

and

CrI.M.P.(MD)No.5006 of 2020

Kaveri

... Petitioner/
Accused

VS.

1.The State represented by
The Inspector of Police,
Kalayarkoil Police Station,
Sivagangai District.

2.Selvi

... Respondents/
Complainants

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to call for records and quash the S.T.C.No.674 of 2020 on the file of the Judicial Magistrate Court No.1, Sivagangai.

For Petitioner : M/s.L.Rajiah

For R1 : Mr.R.Meenakshi Sundaram
Additional Public Prosecutor

For R2 : Mr.S.Sarvagan Prabhu



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ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to the case in S.T.C.No.674 of 2020 pending on the file of the Court of the Judicial Magistrate No.1, Sivagangai and quash the same.

2. The petitioner is the sole accused in S.T.C.No.674 of 2020 on the file of the Judicial Magistrate Court No.1, Sivagangai.

3. On the basis of the complaint lodged by the second respondent / defacto complainant, FIR came to be registered in Crime No.38 of 2020 dated 02.02.2020 against the petitioner herein for the alleged offences under Sections 294(b) and 323 IPC.

4. The first respondent, after completing the investigation, has filed a final report under Section 173 Cr.P.C. against the petitioner for the alleged offences under Sections 294(b), 323 and 506(1) IPC and the case



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was taken on file in S.T.C.No.674 of 2020 and the same is pending on the file of the Judicial Magistrate Court No.1, Sivagangai.

5. The case of the prosecution is that there existed previous enmity between the family of the petitioner and the family of the second respondent, that on 02.02.2020 at about 08.00 a.m., the second respondent's dog followed the pedestrians by barking, that the petitioner had abused the second respondent in filthy language and directed to kill the dog by poisoning, that the second respondent had replied that there was no need to kill their dog and the petitioner can prefer a police complaint, that the petitioner had again abused the second respondent in filthy language and that when the son of the second respondent had intervened and asked the petitioner as to why she was abusing his mother, the petitioner had slapped on his face and also abused him in filthy language and threatened them that her son is working in Indian Army and she would kill them.

6. The case of the petitioner is that on 02.02.2020 at about 06.30 a.m., when the petitioner, after cleaning her front yard, was attempting to



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go to the house of her daughter for cleaning the front yard, the second respondent's dog followed her by barking, that when the same was enquired, the second respondent had abused the petitioner in filthy language, that the second respondent's son had dragged the petitioner's hair and dashed her head against the tree post and rod and slapped several times on her face, that when the petitioner fell down, he had kicked her on her stomach and legs, that the petitioner has become unconscious and two women had taken her and left her in her home, that the petitioner's husband, after returning to home at about 10.30 a.m. and on seeing the condition of the petitioner, had taken her in a vehicle and admitted her in Sivagangai Government Hospital and that she was discharged on 07.02.2020.

7. It is not in dispute that on the basis of the complaint given by the petitioner, FIR came to be registered against the second respondent and her son in Crime No.39 of 2020 for the alleged offences under Sections 294(b), 323 and 506(2) IPC and Section 4 of TN Prohibition of Harassment of Women Act, 2002.



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8. The learned counsel appearing for the petitioner would submit that the petitioner is a 65 year old lady, that she was attacked by the second respondent and her son at about 06.30 a.m. on 02.02.2020 and she has become unconscious, that she was admitted in Sivagangai Government Hospital at about 10.30 a.m. on the same day and therefore, there was no chance or occasion for the alleged occurrence held at about 08.00 a.m. on 02.02.2020 as alleged by the prosecution, that the second respondent and her son, after noticing the serious injuries sustained by the petitioner, they have given a false complaint, as if, the petitioner had attacked them and that the first respondent police, without registering the case on the basis of the complaint taken from the petitioner, received a complaint from the second respondent and registered the case against the petitioner at first and subsequently, the petitioner's complaint was registered.

9. The learned counsel appearing for the petitioner would further submit that the first respondent has submitted a memo to the Sessions Court during the enquiry in the anticipatory bail application of the second respondent that the injured/petitioner herein was discharged from the hospital on 06.02.2020, but whereas, she was discharged only on



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07.02.2020, that the first respondent police, by giving false information, has helped the accused therein to get bail and that the complaints to the higher police authorities were also of no avail. He would further submit that though the charge sheet came to be filed for the complaint registered against the petitioner, final report has not been filed in the case registered against the second respondent and her son.

10. At this juncture, the learned Additional Public Prosecutor appearing for the first respondent would submit that the first respondent has already laid the final report against the second respondent and her son and the same is pending on the file of the Judicial Magistrate Court No.1, Sivagangai.

11. Admittedly, the petitioner's son is serving as a Major in Indian Army.

12. According to the petitioner, she was chased by the dog owned by the second respondent and when the same was questioned, the incident came to be occurred at 06.30 a.m. on 02.02.2020 and in that incident, the



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petitioner was attacked by the second respondent and others and as a result of which, she has become unconscious.

13. The Public Information Officer attached to the Sivagangai Government Hospital, in the reply issued in response to the Right To Information (RTI) application of the petitioner, has stated that the petitioner was admitted in the hospital at about 10.45 a.m. on 02.02.2020 and she was discharged on the afternoon of 07.02.2020. The Public Information Officer attached to the Principal Sessions Court has sent a reply in response to the Right To Information (RTI) application of the petitioner, wherein, it has been stated that on the basis of the letter sent by the Sub Inspector of Police, Kalayarkoil that the injured was discharged in hospital on 06.02.2020, the Public Prosecutor has submitted a report before the Court.

14. As rightly contended by the learned counsel appearing for the petitioner, admittedly, the son of the second respondent is a major and as such, it is highly impossible for a 65 year old lady to slap or attack a young man, who was aged 24 years at that time. As already pointed out,



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the petitioner was constrained to take inpatient treatment from 02.02.2020 to 07.02.2020. Considering the nature of the injuries suffered and also the fact that the petitioner has become unconscious after she was attacked by the second respondent and others at about 06.30 a.m., it is practically not possible for the petitioner to attack the second respondent's son at about 08.00 a.m. on the same day. Considering the above, as rightly contended by the learned counsel appearing for the petitioner, the very occurrence alleged by the prosecution seems to be doubtful.

15. Though the FIR came to be registered for the alleged offences under Sections 294(b) and 323 IPC, charge sheet came to be filed for the alleged offences under Sections 294(b), 323 and 506(1) IPC. Though the prosecution has alleged that the second respondent's son was slapped by the petitioner, there is no evidence or material to show that the second respondent's son sustained injuries or experienced pain at that time.

16. Now turning to the offence under Section 294(b), as already pointed out, the second respondent has vaguely alleged that the petitioner had abused her in filthy language. The Kerala High Court in **Latheef Vs.**



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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.

17. As rightly contended by the learned counsel appearing for the petitioner, even assuming for argument sake that the petitioner had uttered the words as alleged by the prosecution, the same will not satisfy the definition of obscenity and as such, no offence under Section 294(b) is made out.

18. Now coming to the offence under Section 506(1) IPC, according to the prosecution, the petitioner, by saying that her son is working in Army, has threatened that she would kill the second respondent and others. In order to attract the offence under Section 506(1) IPC, the prosecution has to show that the threat given by the petitioner as real and substantial. It



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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."



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19. In the present case, it is not the case of the second respondent that after hearing the alleged threatening made by the petitioner, she and her son were criminally intimidated.

20. Considering the above, this Court is of the clear view that permitting the prosecution to continue the proceedings in S.T.C.No.674 of 2020 is not only unwarranted and the same would only amount to abuse of process of law and as such, the proceedings in S.T.C.No.674 of 2020 is liable to be quashed.

21. In the result, this Criminal Original Petition is allowed and the proceedings in S.T.C.No.674 of 2020 on the file of the learned Judicial Magistrate No.1, Sivagangai, is hereby quashed. Consequently, connected miscellaneous petition is closed.

05.07.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

- 1.The Judicial Magistrate No.1,
Sivagangai.
- 2.The Inspector of Police,
Kalayarkoil Police Station,
Sivagangai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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Pre-delivery order made in
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and
Crl.M.P.(MD)No.5006 of 2020

Dated : 05.07.2023