



Crl.O.P.(MD) No.11980 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.04.2023

CORAM

THE HON'BLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.O.P.(MD) No.11980 of 2021 and
Crl.M.P.No.2480 of 2021

Velusamy

... Petitioner

-VS-

1.State rep. by

The Inspector of Police,
Gandamanur Vilakku Police Station,
Theni District
Crime No.222/2021

... 1st respondent

2.Eswaran

2nd Respondent /
De-facto complainant

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure to call for the records relating to the impugned FIR in Crime No.222/2021 dated 28.07.2021 on the file of the 1st respondent police and quash the same as illegal.

For Petitioner : Mr.R.Murugan

For Respondents : Mr.M.Muthumanikkam for R1
Government Advocate (Crl. Side)

No appearance for R2



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ORDER

This criminal original petition has been filed to quash the FIR in Crime No.222/2021 dated 28.07.2021 on the file of the 1st respondent police registered for the offences under Sections 447 and 506(ii) IPC,

2. The case of the prosecution in nutshell is as follows:

It is a case and counter. It is alleged that the petitioner has trespassed into the land of the de-facto complainant and threatened him with dire consequences and pursuant to the complaint given by the 2nd respondent, a case has been registered in Crime No.222/2021 for offences under Sections 447 and 506(ii) IPC, for quashing the same, the petitioner is before this Court.

3. When this petition is taken up for hearing, the learned Government Advocate (Crl. Side) would submit that upon completion of investigation, final report has been filed by the respondent police. At this juncture, the learned counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in **2018 (15) SCC 273 (Joseph Salvaraj Vs. State of Gujarat)** and submitted that this Court is dutybound to consider the entire final report and find out whether any



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offence is made out against the petitioner. He further submitted that even if the entire material annexed with the final report is taken as truth, no offence is made out against the petitioner and hence, he seeks for quashment of the impugned final proceedings against the petitioner. He further submitted that the case of the de-facto complainant that the petitioner trespassed into the de-facto complainant's land and criminally intimidated the de-facto complainant is not only false but also without any supporting material.

4. Per contra, the learned Government Advocate(Criminal side) would submit that the investigation officer, after completion of the investigation in the case and counter case, filed the final report and in the final report, all ingredients to constitute the offence under Sections 447 and 506(ii) IPC are present and hence, he seeks for dismissal of this quash petition. The de-facto complainant, namely, second respondent eventhough served, there was no appearance on behalf of him.

5. It is the allegation in the FIR as well as in the final report that on the date of occurrence, ie, on 28.07.2021, at 09.00 p.m, the petitioner trespassed into the defacto complainant's land and criminally



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intimidated him and there was no allegation that the petitioner caused injury to the defacto complainant.

6. This Court, upon careful perusal of the statement made by the witnesses recorded during investigation, namely, L.W1 to L.W.3, does not find any ingredients to constitute the offence under Sections 447 and 506(ii) IPC.

7. As far as Section 447 IPC is concerned, as per the averments made in the FIR as well as the materials annexed with the final report, it is seen that there is a civil dispute pending between the parties regarding the possession of the property and both parties have claimed the possession of the suit property and there was no final adjudication in the said suit in O.S.No.242 of 2019 pending on the file of learned Sub Judge, Theni. In the said circumstances, offence of criminal trespass does not arise.

8. So far as Section 506(ii) IPC is concerned, it is well settled that there is some overt act more than criminal intimidation to be attributed against the petitioner. In this case, no *actus reus* is present.



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This Court, in the judgement reported in **2000(2)LW(Crl)646** held as follows:

“ My learned brother C. Shivappa. J. considered the entire aspect of that matter and held that the speech would not attract the offence under Section 506 Part II I.P.C. The learned Judge has observed as under:-

....Part II of Sec.506 I.P.C is attracted if the criminal intimidation includes threat to cause death or grievous hurt. Mere outburst is not sufficient to hold that it would fall within the mischief of Sec. 506 I.P.C . In the instant case, the averment in the complaint and the statements in the depositions, if taken together, there are no allegations in the whole complaint that the petitioner ever made any attempt or did any act in pursuance of his alleged expression....

The learned Judge has held that mere mens rea would not be sufficient to attract commission of an offence in the absence of actus reus. I am in full agreement with the learned Judge. It is evident that actus reus is lacking in the instant case to warrant the initiation of the criminal proceedings. Continuance of the proceedings would only amount to abuse of process of law.”

9. Applying the above principle, in this case, mere utterance of the words to assault the de-facto complainant, does not amount to commission of offence under Section 506(ii) IPC. Hence, this Court does not find any sufficient ingredients against the petitioner to proceed on the basis of the final report filed by the respondent police on the file



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of the learned Judicial Magistrate, Aundipatti.

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10. In the result, this Criminal Original Petition is allowed and the case in Crime No.222/2021 and the consequential final report filed in Crime No.222/2021 are quashed. Consequently connected Miscellaneous Petition is closed.

28.04.2023

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

RR



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To

1. The Inspector of Police,
Gandamanur Vilakku Police Station,
Theni District

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



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K.K.RAMAKRISHNAN, J.

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