



Crl.O.P.(MD)No.613 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 18.01.2024

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.(MD) No.613 of 2022

and

Crl.M.P.(MD).No.443 of 2022

- 1.Saiyathu Abuthakir
- 2.Hidhash
- 3.Muhamathu Riyash Ahamathu
- 4.John ... Petitioners/Accused Nos.1 to 3

Vs.

- 1.The State through
the Inspector of Police,
Gudalur South Police Station,
Gudalur, Theni District.
(Crime No.694 of 2020)
- 2.Kamalakkannan ...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the complaint in C.C.No.102 of 2021, on the file of the learned Judicial Magistrate, Uthamapalayam and quash the same as illegal as against these petitioners.

For petitioners : Mr.M.Palani

For R-1 : Mr.P.Kotaichamy,
Government Advocate
(Criminal Side)

For R-2 : No Appearance



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ORDER

This petition has been filed seeking to quash the case in C.C.No.102 of 2021, on the file of the learned Judicial Magistrate, Uthamapalayam.

2. The case of the prosecution is that the *defacto* complainant made a complaint before the respondent Police on 20.03.2020, as if, with regard to registration of some documents, the petitioners herein abused the *defacto* complainant with filthy language and threatened him with dire consequences and attacked him with hands. Thereafter, the respondent Police registered a case against the petitioners in Crime No.694 of 2020 for the alleged offence punishable under Sections 294(b), 323 and 506(ii) of I.P.C. and the investigation has been conducted by the respondent Police and after completing the investigation, the respondent Police filed a charge sheet before the concerned Court and the same was taken on file in C.C.No.102 of 2021 before the learned Judicial Magistrate, Uthamapalayam. Challenging the same, the present petition has been filed.



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3. The learned counsel appearing for the petitioners would submit that admittedly, the occurrence was happened on 20.03.2020, whereas, the complaint was registered only on 09.09.2020 and there was no proper explanation neither in the charge sheet nor in the FIR with regard to delay in registering the FIR and the respondent Police mechanically registered the case as against the petitioners after a lapse of six months. He would further submit that the necessary ingredients required under Sections 294(b), 323 and 506(ii) of I.P.C were also not satisfied in this case. In respect of Section 323 of I.P.C.. there must be a wound certificate through a Doctor. However, the Doctor was also not examined by the respondent Police. Even then, the respondent Police filed a charge sheet under Section 323 of I.P.C., which is not a sustainable one and further, the other necessary ingredients required under Sections 294(b) and 323 of I.P.C were also not satisfied. Hence, this charge sheet is squarely covered by the Judgment of the Hon'ble Apex reported in

4. The learned Government Advocate (Criminal Side) appearing for the respondent Police would submit that though the date of occurrence is 20.03.2020, whereas, the complaint was filed only on



09.09.2020 after a delay of six months. Mere delay in filing the FIR is not vitiated in prosecuting the case and ultimately, the respondent Police had totally examined four eye witnesses and they are valuable witnesses. However, he fairly conceded that the wound certificate was not referred in the charge sheet and the Doctor was also not examined. Accordingly, he prays for dismissal of this petition.

5. Considering the facts and circumstances of the case, in respect of Sections 294(b) and 506(ii) of I.P.C, the respondent Police examined the persons viz., Shanmugavel and Vikram as eye witnesses and they were employed in the nearby bakery and they were available at the scene of occurrence and this Court perused 161 (3) of Cr.P.C. statements given by Shanmugavel and Vikram and on perusal of the same, it is seen that they were completely denied the alleged occurrence happened on 09.09.2020 and they were not able to recollect the incident after lapse of six months and when such being the case, other witnesses, viz., P.W.1, P.W.2 and P.W.3 were co-employees and their witnesses were also not admissible one and hence, the necessary ingredients required under Sections 294(b) and 506(ii) of I.P.C. are not satisfied. Further, the learned Government Advocate (Criminal Side) fairly conceded that the wound certificate was not referred in the charge sheet and the Doctor was



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also not examined. Hence, the necessary ingredient required under Section 323 of I.P.C., is also not satisfied. Therefore, the charge sheet is squarely quashed by the parameters of the Hon'ble Apex Court in the case....reported in...

6. In view of the above, the case in C.C.No.102 of 2021, on the file of the learned Judicial Magistrate, Uthamapalayam, against the petitioners is hereby quashed and accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

18.01.2024

Index : Yes/No
Internet : Yes/No
TSG
To

- 1.The Judicial Magistrate, Uthamapalayam.
- 2.The Inspector of Police,
Gudalur South Police Station,
Gudalur, Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI. J.

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