



Crl.O.P.(MD)No.8699 of 2024

'BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.10.2024

PRONOUNCED ON : 29.11.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.8699 of 2024

and

Crl.M.P.(MD)Nos.5967 and 9867 of 2024

Ramesh

... Petitioner/2nd Accused

Vs.

1.The State represented by
The Inspector of Police,
Elumalai Police Station,
Madurai District.
(Crime No.235 of 2019)

... 1st Respondent / Complainant

Theivam

... 2nd Respondent/Defacto complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.12 of 2021 on the file of the Judicial Magistrate No.II, Usilampatti and quash the same of the petitioner.



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For Petitioner : Mr.R.Babu Jaganath

For Respondents : Mr.R.Sanjai Gandhi
Government Advocate (Crl.Side)
for R.1
: Mr.P.Periasamy
for R.2

ORDER

This petition has been filed invoking Section 482 Cr.P.C., seeking orders to call for the records in C.C.No.12 of 2021, pending on the file of the Court of the Judicial Magistrate No.II, Usilampatti and quash the same as against the petitioner.

2. The petitioner is the second accused in C.C.No.12 of 2021 for the alleged offence under Section 506(ii) I.P.C.

3. The case of the prosecution is that the defacto complainant has admitted his father, who was not well, in Madurai Meenakshi Mission Hospital on 13.04.2017, that while his father was in treatment, the hospital management had informed that their hospital at Thanjavur was having so many facilities and his father would recover immediately after admitting in the said hospital, that the



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complainant believing their words had visited Meenakshi Mission Hospital at Thanjavur, but found that there were no facilities, that the complainant had then discharged his father on 03.05.2017 from Madurai Meenakshi Hospital and subsequently, his father died on 06.05.2017, that the complainant has then filed a Public Interest Litigation in W.P.(MD)NO.17264 of 2017 before the Madras High Court against Thanjavur Meenakshi Mission Hospital, but the same came to be dismissed, that when the complainant was in his house at Kodanginaickanpatti on 06.06.2019 at about 11.00a.m., both the accused came in a black colour car and directed him to prefer an appeal, as his case filed against Thanjavur Meenakshi Mission Hospital was dismissed, that they would help him in all the ways and they are ready to give money at that time itself, but the defendant had refused for the same and hence the first accused had threatened that if the defacto complainant has not complied with their direction, they would kill him and burry him at that place and also attempted to attack with iron rod, that the second accused had abused him in filthy language and that when the complainant had shouted, the neighbours had intervened and hence, the accused had escaped from that place and that therefore, both the accused have committed the offences under Sections 294(b) and 506(ii) I.P.C.



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4. On the basis of the complaint given by the defacto complainant – Theivam, F.I.R., came to be registered in Cr.No.235 of 2019 on 30.08.2019 against two persons including the petitioner for the alleged offences under Sections 294(b) and 506(ii) I.P.C. After completing investigation, charge sheet came to be filed before the jurisdictional Magistrate Court and the same was taken on file in C.C.No.12 of 2021 and is pending on the file of the Judicial Magistrate Court No.II, Usilampatti.

5. The case of the petitioner is that the occurrence said to have been taken place on 06.06.2019, for which a belated complaint was given by the defacto complainant on 24.07.2019, that the offence under Section 506(ii) I.P.C., is not at all attracted as the second respondent / complainant has not stated anything as against the petitioner relating to the threat made by him, that if really the defacto complainant was apprehended due to the occurrence, he might have immediately lodged the complaint, instead after nearly 1 ½ months delay, the complaint was lodged with malicious intention to robe the petitioner falsely in the above case, that the defacto complainant in the F.I.R., has not mentioned about the names of the eye-witnesses, who had allegedly witnessed the occurrence, except that of one Chandran who happens to be the uncle of the complainant, that the brother



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of the petitioner / second accused is an influential person both with money and power and the complainant has been dancing to the tune of the petitioner's brother, that all the alleged eye-witnesses have given their statement in a stereotype nature, that there is absolutely no prima facie case made out against the petitioner to proceed further in the above case and that therefore, the petitioner was constrained to approach this Court invoking Section 482 Cr.P.C.

6. The second respondent / defacto complainant has filed a counter affidavit stating that the petitioner has suppressed the orders passed in Crl.O.P. (MD)No.13613 of 2022, dated 28.07.2022 and the order passed in Crl.O.P. (MD)No.4158 of 2024, dated 15.03.2024, that the petitioner has purposely not complied with the orders passed by this Court in the above cases, that the petitioner / second accused is a habitual offender as civil cases are pending against him, that since the defacto complainant had taken Ayurvedic treatment for his jaundice at Achambathu, he was not in a position to lodge the complaint immediately and as such, there is absolutely no wilful delay in lodging the F.I.R., that mere delay in lodging the complaint itself is not a ground to quash the case and that therefore, the quash petition is liable to be dismissed.



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7. The learned Counsel for the petitioner would mainly contend that though the complainant has alleged that he was criminally intimidated on 06.06.2019, he has lodged the complaint only on 24.07.2019, after the lapse of more than 1 ½ months and that since the complainant has not offered any acceptable reason or explanation for the delay occurred, the same has to be considered as fatal to the prosecution.

8. The learned Counsel for the defacto complainant would rely on a decision of this Court in ***V.D.Mohana Krishnan and others Vs. State represented by the Inspector of Police, District Crime Branch, Cuddalore***, passed in Crl.O.P.No.718 of 2015, dated 27.04.2015, wherein a learned Judge of this Court has held that the delay in lodging the F.I.R., cannot be taken as a fatal in every case and the relevant passage is extracted hereunder:

“9. As regards the first contention of Mr.R.Sankarasubbu, it is now settled by the Supreme Court in Ranjan Dwivedi Vs. CBI [AIR 2012 SC 3217] that, long delay cannot be a reason to quash the prosecution. Similarly, delay in lodging the FIR is also not fatal in every case. In the facts of this case, the accused had represented that, he is an Officer in the High Court and on that representation, he had collected money from the de facto complainant. In a cheating of this nature, one cannot expect the de facto complainant to



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immediately rush to the police station and lodge a complaint and every attempt could have been made by the de facto complainant to get back the money and similarly, the accused also could have made an attempt to cover up his delinquency and hence, the delay could have occasioned. Nevertheless, delay in lodging the FIR cannot be the sole ground for quashing a prosecution, when there are strong materials to proceed with the trial.”

9. The learned Counsel would also rely on the decision of this Court in ***G.Manohar Raj and another Vs. State represented by the Inspector of Police, Wellington Police Station, the Nilgiris District***, passed in Crl.O.P.(MD)No. 27257 of 2009, dated 08.06.2016, wherein also the learned Judge has observed as follows:

“8 It is trite that mere delay in lodging of a complaint to the police, by itself, cannot lead to the inference that a false case has been foisted by the complainant. The delay in registering a complaint has to be viewed in the backdrop of facts and circumstances of each case.”

10. Considering the above, the legal position is very clear that mere delay in lodging of the complaint to the police, by itself cannot be taken as a fatal to the prosecution case and the delay has to be viewed in the backdrop of facts and



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circumstances of each case. In the present case, as already pointed out, the only offence alleged against the petitioner is that he had caused criminal intimidation on the defacto complainant. Even according to the prosecution, the incident was occurred on 06.06.2019 and the complaint came to be lodged on 24.07.2019 and on that day, CSR came to be registered in CSR No.281 of 2019 and FIR came to be registered on 30.08.2019. Admittedly the complainant has not offered any reason or explanation for the delay in lodging the complaint in the F.I.R., but in the statement recorded under Section 161(3) Cr.P.C., the complainant has stated that since the accused are influential persons, he was frightened for one month and at the request of his relatives, he lodged the complaint on 24.07.2019 and on the basis of the said complaint, FIR came to be registered on 30.08.2019. But in the counter affidavit, the defacto complainant has taken a different stand that he was attacked by jaundice fever for which he had to take Ayurvedic treatment at Achambathu, which is about 60km from his house at Kodanginayakkanpatti and the treatment went on for more than four months and he recovered fully after 8 weeks, that since the accused persons are highly wealthy and influential persons, he was under apprehension that they can do harm against him and his family, that the police has registered CSR on 27.07.2019 and as there was no action, the defacto complainant had approached the police authorities, that since the



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Inspector of Police was not available, the complainant went to the police station again during the last week of August 2019 and FIR came to be registered on 30.08.2019 and that therefore, there is no wilful delay in lodging the complaint.

11. As rightly contended by the learned Counsel for the petitioner, the complainant has nowhere whispered about his suffering from jaundice and taking of Ayurvedic treatment at Achambathu for about four months in the F.I.R., and in the statement recorded under Section 161(3) Cr.P.C., and as rightly contended by the learned Counsel for the petitioner, the explanation now offered is hard to believe.

12. It is evident from the records that the defacto complainant has filed a petition Crl.O.P.(MD)No.13613 of 2022 against the respondent police seeking directions to the learned Judicial Magistrate No.II, Usilampatti to complete the trial and dispose of the case in C.C.No.12 of 2021. Considering the submission made by the learned Government Advocate that the case was pending in service stage, directed the learned Judicial Magistrate to give suitable instructions to the respondent police to effect service of summons upon the accused and secure him and further directed the trial Court to complete the trial as expeditiously as



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possible preferably within a period of six months from the date of securing the accused.

13. It is also evident from the records that the petitioner herein has filed a petition in Crl.O.P.(MD)No.4158 of 2024 seeking Anticipatory Bail and this Court, considering the submission made by the learned Counsel for the petitioner that the petitioner was ready to surrender before the trial Court, permitted the petitioner to file an application under Section 88 Cr.P.C, before the learned Magistrate and the learned Magistrate was directed to consider the said petition on merits and pass orders on the same day.

14. The main contention of the second respondent / complainant is that the petitioner has not complied with the above said orders of this Court. But the learned Counsel for the petitioner would submit that when the above quash petition was moved before this Court, this Court has granted interim stay and also ordered for dispensing with the personal appearance of the petitioner before the concerned Court on condition that the petitioner shall appear before the concerned Court within a period of 15 days from the date of receipt of a copy of that order and file an undertaking affidavit by affixing his recent passport size



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photograph to the effect that he will appear before the trial Court as and when required and must ensure his proper representation through Advocate and that in pursuance of the directions of this Court, the petitioner has appeared before the learned Judicial Magistrate Court, Usilampatti and filed an undertaking affidavit as directed by this Court and that since the petitioner has complied with the above direction, as rightly contended by the learned Counsel for the petitioner, the question of complying the other direction of filing a petition under Section 88 Cr.P.C., does not arise at all.

15. Now turning to the merits of the case, the learned Counsel for the petitioner would mainly contend that the prosecution has not shown that the intention of the petitioner was to cause alarm to the defacto complainant and they have not shown that the defacto complainant was criminally intimidated. 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** and the relevant passages are extracted hereunder:

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



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"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



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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.”

16. In the case of ***Noble Mohandass vs State reported in (1998)2 MWN (Cr.)184***, this Court has held as follows:

“Further for being an offence under [Section 506\(2\)](#) which is rather an important offence punishable with imprisonment which may extend to seven years, the threat should be a real one and not just a mere word when the person uttering it does exactly mean what he says and also when the person at whom threat is launched does not feel threatened actually.”



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17. It is settled law that an empty threat by itself will not make out an offence of criminal intimidation unless there is material to show that there was some overt act which makes such a threat a real one. In the case on hand, as already pointed out, according to the complainant, the accused have come to his house and directed him to prefer an appeal challenging the dismissal of the Public Interest Litigation filed against Thanjavur Meenakshi Mission Hospital and when the same was refused, the petitioner by attempting to attack with iron rod had caused criminal intimidation. As already pointed out, the threat must be with an intention to cause alarm to the complainant to cause that person to do or omit to do any work and mere expression of any words without any intention to cause alarm would not be sufficient.

18. As rightly contended by the learned Counsel for the petitioner, even if the allegations made in the complaint are taken as true, no offence of criminal intimidation has made out. The prosecution has not shown any material and evidence that there was an intention on the part of the petitioner to cause alarm in the mind of the complainant and that the threat made by the petitioner was real. As rightly contended by the learned Counsel for the petitioner, the very factum that the defacto complainant had lodged the complaint after the lapse of



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1 ½ months would only go to show that the complainant was not criminally intimidated.

19. Considering the above, this Court has no hesitation to hold that the continuation of the prosecution against the petitioner would amount to abuse of process of Court, which requires interference of this Court under Section 482 Cr.P.C. Consequently, this Court concludes that the charge sheet in C.C.No.12 of 2021 as against the petitioner is liable to be quashed and is quashed accordingly.

20. In the result, the Criminal Original Petition is allowed and the charge sheet in C.C.No.12 of 2021, pending on the file of the Judicial Magistrate Court No.II, Usilampatti is quashed as against the petitioner is concerned.

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

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1. The Judicial Magistrate No.II, Usilampatti
- 2.The Inspector of Police,
Elumalai Police Station,
Madurai 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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