



Crl.O.P.(MD)No.14047 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.04.2024

CORAM:

THE HONOURABLE MR.JUSTICE A.A.NAKKIRAN

Crl.O.P.(MD) No.14047 of 2021

and

Crl.MP(MD)No.7364 of 2021

Gnanasekaran

... Petitioner/ Sole Accused

Vs.

1.The State rep by the
The Inspector of Police,
Maraneri, Virudhunagar,
Virudhunagar District.
(In Crime No.96 of 2021)

... 1st Respondent / Complainant

2.Seenivasan

... 2nd Respondent / Defacto
Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to charge sheet in C.C.No.34 of 2021 on the file of the Judicial Magistrate Court No.1, Sivakasi and quash the same as illegal.

For petitioner

: Mr.M.Ajmal Khan
for M/s.Ajmal Associates

For R1

: Mr.K.Sanjai Gandhi,
Government Advocate (Crl.Side)

For R2

: Mr.Kalaiyarasi Bharathi



ORDER

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This petition has been filed to quash the proceedings in C.C.No.34 of 2021 pending on the file of the Judicial Magistrate Court No.1, Sivakasi.

2.The case of the prosecution is that on 26.04.2021, at about 05.00 p.m, the petitioner trespassed into the property of the defacto complainant and damaged the boundary stones and the gate worth about Rs.68,000/-. When the same was questioned by the defacto complainant, the petitioner abused him in filthy language and threatened him with dire consequences. Thereby, the defacto complainant lodged a complaint before the respondent police and the same was registered in Crime No.96 of 2021 for the offence punishable under Sections 447, 294(b), 427 and 506(i) of IPC. After completion of investigation, the respondent police filed final report before the Judicial Magistrate Court No.1, Sivakasi and the same was taken on file in C.C.No.34 of 2021. Challenging the same, present petition has been filed.

3.The learned counsel appearing for the petitioner submitted that the subject matter of the property is originally belonged to one Ayyanathan. He is the absolute owner of the property. He has 3 sons



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namely, Vijayasekaran, Gnanasekaran and Dhanasekaran. The petitioner herein and one of the vendors of the defacto complainant namely, Vijayasekaran are the sons of the above said Ayyanathan. The alleged property is an undivided joint family property. The petitioner herein is one of the coparcener of the said property. The petitioner along with his siblings / vendors of the defacto complainant have been in possession and enjoyment of the said property till date. In such circumstances, the said Vijayasekaran along with one Rajam and Sivashankar fabricated the documents as if there was some family arrangements on 23.08.2017. On the strength of the same, they sold the properties to the defacto complainant comprised in S.Nos.1352/1B, 1352/2A and 1352/2B. Without knowing the same, on 26.04.2021, at about 05.00 p.m, when the petitioner went to the above said property for making some maintenance work, the defacto complainant objected the same by stating that he is the owner of the property. Thereafter only, the petitioner came to know about the above said forged family arrangement dated 23.08.2017. Thereafter, the vendors of the defacto complainant filed a declaration suit in O.S.No. 69 of 2018 before the Principal District Court, Virudhunagar District at Srivilliputtur with suppression of truthful facts. During the pendency of the suit, the alleged properties were sold to the defacto complainant on 09.02.2021 vide Document No.1535/2021.



4. He further submitted that no offence is attracted against the petitioner since the alleged property is an undivided joint family properties and the petitioner herein is one of the coparcener of the said property. The defacto complainant has purchased the property having fully knowledge that the property is the joint family property. Already, a civil dispute is pending between the parties.

5.The learned counsel appearing for the second respondent submitted that he purchased the properties comprised in S.Nos.1352/1B, 1352/2A and 1352/2B from one Vijayasekaran on 09.02.2021 vide Document No.1535/2021. From onwards, he is in possession and enjoyment of the properties and patta was also mutated in his name. However, the petitioner trespassed into the said properties and threatened the defacto complainant with dire consequences. Therefore, there is specific allegation against the petitioner. Hence, he prayed for dismissal of this petition.

6.The learned counsel for the petitioner submitted that the petitioner is a sole accused on the complaint lodged by the second respondent herein for the offences punishable under Sections 447, 294(b), 427 and 506(i) of IPC. No offence is made out as against the



petitioner since the case is civil in nature. No ingredients to attract any of the offence as alleged by the second respondent herein.

7. Heard the learned counsel appearing for the petitioner, the learned Government Advocate (CrI.Side) appearing for the State and the learned counsel appearing appearing for the second respondent.

8. According to the petitioner, none of the offences alleged against the petitioner is attracted since no ingredients have been made out. The allegations against the petitioner are that on 26.04.2021, at about 05.00 p.m, he trespassed into the alleged property and abused him in filthy language and damaged the boundary stones and gate and also threatened him with dire consequences. Regarding this, no materials have been collected by the Investigation Agency. Even in the observation mahazar, nothing has been stated.

9. On perusal of the records it is seen that the offence under Section 506 (i) is not attracted since no materials are available to show that the accused criminally intimidated the defacto complainant. He relied upon the judgment of this Court in **CrI.OP(MD)No.1748 of 2013 (G.Paramasivam and Another Vs. Deputy Commissioner of Police and**



Others) dated 02.07.2015, wherein it is held that to constitute an offence under Section 506 (ii) IPC, '*a mere threat per se would not attract the said provision. The allegation is that the petitioners went to the house of the defacto complainant and threatened orally by showing their hands. A mere outburst would not attract Section 506(ii) IPC*'. As mentioned earlier, overt act is that the petitioner threatened the defacto complaint. But, because of these utterance, it is not the allegation of the defacto complainant that he suffered criminal intimidation. In view of the same, the offence under Section 506 (i) of IPC cannot be said to be attracted.

10.To attract offence under Section 294 (b), the allegation is that the petitioner abused him in filthy language. Moreover, it should have been taken place in a public place. There is no allegation in the final report that the petitioners abused the defacto complainant in a public place. So, in the absence of any such ingredients, the offences under Section 294 (b) would not be attracted.

11.Insofar as the offences under Sections 447 and 427 of IPC are concerned, there is no material available to show that the petitioner trespassed into the property and caused damage to the property. Further, the respondent police has also not filed any valuation report for the



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alleged damage. Hence, the offences under Sections 447 and 427 of IPC would not be attracted as against the petitioner.

12. In view of the above said discussion, this Court is of the considered view that continuation of the prosecution against the petitioner will amount to abuse of the process of law. Hence, charge sheet is liable to be quashed.

13. Accordingly, the proceedings in C.C.No.34 of 2021 on the file of the Judicial Magistrate Court No.1, Sivakasi, is quashed and the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

16.04.2024

NCC : Yes/No

Index : Yes/No

Internet : Yes/No

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To

1. The Judicial Magistrate Court No.1,
Sivakasi.

2. The Inspector of Police,
Maraneri, Virudhunagar,
Virudhunagar District.

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



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A.A.NAKKIRAN, J.

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