



Crl.O.P.(MD).No.15620 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved On	:	09.11.2023
Pronounced On	:	27.02.2024

CORAM

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.O.P(MD).No.15620 of 2020

and

Crl.M.P.(MD).No.7646 of 2020

Kavitha

... Petitioner/Accused

Vs.

1. The Inspector of Police,

Virudhunagar Bazar Police Station,

Virudhunagar Town,

Virudhunagar District.

(In Crime No.397 of 2016)

2.V.Indra

... Respondents/Respondents

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records pertaining to C.C.No.139 of 2019 on the file of the learned Judicial Magistrate No.I, Virudhunagar and quash the same.



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For Petitioner : Mr.M.Sheik Abdullah

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

: Mr.N.Dilip Kumar,
for R2

ORDER

This petition has been filed to quash the proceedings in C.C.No.139 of 2019 on the file of the learned Judicial Magistrate No.I, Virudhunagar.

2.The case of the prosecution is that the petitioner is the brother's wife of the second respondent/defacto complainant. On 12.10.2016, the mother of the second respondent/defacto complainant had executed her 1/3 share from the undivided property to her daughter, by way of registered settlement deed and the same was registered before the Sub Registrar, Virudhunagar. Further, the brother of the second respondent/defacto complainant, namely Rajkumar, had executed his own house, which is located at Narayanamadam Street (which house the petitioner has been residing) to his sister, by way of registered sale deed No.628 of 2018. The mother and the second respondent had settled some property which is located at Watrop of Virudhunagar District to her brother. Meanwhile,



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due to strained relationship between the petitioner and her husband, the petitioner is living separately for the past few years. The petitioner is living at Virudhnunagar at the house of her husband, which was transferred to the second respondent/defacto complainant by way of settlement deed. Now, the second respondent needed the house. But, the petitioner refused to vacate the house and criminally intimidated her by way of sending SMS. Hence, the second respondent gave a complaint before the first respondent Police. Based on which, the first respondent Police registered the case in Crime No.397 of 2016, for the offence under Sections 294(b), 506(i) and 507 of IPC. After completion of investigation, the final report was filed and the same was taken on file in C.C.No.139 of 2019, by the learned Judicial Magistrate No.I, Virudhunagar. To quash the same, the present petition has been filed.

3.The learned counsel appearing for the petitioner submitted that the second respondent/defacto complainant preferred the complaint by giving criminal colour to the civil dispute pending between the parties. According to the allegations, the offence under Section 294(b) of IPC is not at all made out against the petitioner. He further submitted that there was a criminal intimidation through cell phone and hence, the offences under Sections 294(b)



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and 506(i) of IPC is not made out. In this regard, the learned counsel relied upon the following judgments of this Court:

(i) In the case of *Soba Vs. State of Kerala*.

(ii) In the case of *K.Jeyaramanryin Vs. Janakaraj and others* reported in *1996(1) CTC 417*.

(iii) In the case of *Nobel Mohandoss Vs. State* reported in *1988(2) MNW (Cr) 184*.

(iv) In the case of *Muthiah Posumpon Vs. State* in *Crl.O.P.(MD).No. 13259 of 2017*.

(v) In the case of *S.P.Raja Vs. State* in *Crl.O.P.(MD).No.17540 of 2018*.

Hence, he seeks for quashment of the proceedings in C.C.No.139 of 2019.

4.The learned counsel appearing for the second respondent/defacto complainant submitted that the allegations made out cognizable offence and hence, the appreciation of the evidence, at this stage cannot be entertained. He also specifically stated that the statement under Section 161 of Cr.P.C., reveals the offence. Hence, this Court has no jurisdiction to interfere with this matter under Section 482 of Cr.P.C.



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5.The learned Additional Public Prosecutor also reiterated the argument of the learned counsel appearing for the defacto complainant and submitted that the prosecution, after examination of the witness, filed the final report. The same was taken on file in C.C.No.139 of 2019, by the learned Judicial Magistrate No.I, Virudhunagar. Now, the case is under the process of the examination of the witnesses. He also produced the deposition copy of the chief examination. The respondent filed the petition before the Court stating that in view of the pendency of this case with stay, he has not cross examined the witnesses.

6.At this stage, this court considered the rival submission and also perused the materials produced before the court below and the annexed document in the final report. This Court also perused the FIR and the final report and the statement of the witnesses.

7.From records, it is clear that the petitioner is the sister-in-law of the defacto complainant. There is a dispute regarding the division of the properties. Even as per the allegations that there was a threatening through the whatsapp call, in this aspect, the Honourable Supreme Court in the case of ***Manik Taneja Vs. State of Karnataka***, reported in (2015) 7 SCC 423, held as follows:



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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 mind of the second respondent causing obstruction in discharge of his duty. As far as the comments posted on Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of the appellants posting a comment on Facebook may not attract ingredients of criminal intimidation in Section 503 IPC.

7.1. Further, in the case of ***Parminder Kaur v. State of Punjab***, reported in **(2020) 8 SCC 811**, the relevant portion is extracted hereunder;



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V. Charge of criminal intimidation

26. Proving the intention of the appellant to cause alarm or compel doing/abstaining from some act, and not mere utterances of words, is a prerequisite of successful conviction under Section 506 IPC.

7.2.The above said criminal intimidation through whatsapp call does not constitute the offence under Section 294(b) and 506(i) of IPC and the initiation of the proceedings is not legally maintainable. Apart from that , this court in the case of ***K.Jayaramanuju Vs. Janakaraj and another*** reported in ***1996 (1) CTC 470*** and in the case of ***Noble Mohandass Vs. State*** reported in ***1998 (2) MWN (Cr.) 184***, and other judgements specifically held that in order to constitute the offence under Section 506(ii) of IPC, there must be a *actus rea* as well as *mens rea*. The relevant portion of Judgment as follows;

7.According to the petitioners offence under Section 506 (ii) is not attracted since no materials are available to file final report. He relies upon the judgment of this Court in Crl.OP(MD)No.9083 of 2017 and Crl.OP(MD)No.8686 of 2017 S.Ramesh Vs State of Tamilnadu and others dated 21.08.2018. It has been observed by this Court that to constitute an offence under Section 506 (ii) IPC, a mere threat is not enough and there must be an act in pursuance



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to the said threat, without which an offence of criminal intimidation is not attracted. So, the point for consideration is whether the allegation mentioned in the complaint as well as the statement of the witnesses attract the ingredients of 506 (ii) IPC. As mentioned earlier, overt act is that the petitioners and others threatened the defacto complainant to open the gate and instigated the other persons to kill him. But, because of these utterance, it is not the allegation of the defacto complainant that he suffered criminal intimidation. So, reading of the final report as well as the statement of the witnesses and the defacto complainant, it is seen that there was only the mere oral threat and it was not real one and also it is seen that it was only an outburst of words expressed by the petitioners. So, the offence under Section 506 (ii) of IPC cannot be said to be attracted.

8.From the above judgments, law laid down by this Court, the continuation of the proceedings for the above alleged allegation amounts to abuse of process of law as held by the Honourable Supreme Court in the case of ***Krishna Lal Chawla Vs. State of U.P.***, reported in ***(2021) 5 SCC 435*** and threatening through whatsapp call is not legally sustainable for the offence under Sections 294(b) and 506(i) of IPC. In the above circumstances, I am of the considered opinion that permitting the prosecution to continue the proceedings in C.C.No.139 of 2019



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against the petitioner is unnecessary. Therefore, this court is inclined to quash the proceedings.

9.Hence, the proceedings pending against the petitioner in C.C.No.139 of 2019 on the file of the learned Judicial Magistrate No.I, Virudhunagar, shall stand quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected criminal miscellaneous petition is closed.

27.02.2024

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

- 1.The Judicial Magistrate No.I,
Virudhunagar.
- 2.The Inspector of Police,
Virudhunagar Bazar Police Station,
Virudhunagar Town,
Virudhunagar District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

vsg

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