



Crl.O.P.(MD)No.22204 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.02.2025

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THE HON'BLE MR.JUSTICE P.DHANABAL

Crl.O.P.(MD)No.22204 of 2024

and

Crl.M.P(MD)Nos.13809 and 13810 of 2024

Beula @ Beula Santhakumari

.. Petitioner

Vs.

1.The Inspector of Police
Marthandam Police Station
Kanyakumari District

2. Santhosh Kumar

.. Respondents

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to call for the records in relation to STC No. 1190 of 2023 on the file of the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District and subsequently quash the same as devoid of merits so far as the petitioner is concerned.

For Petitioner : Mr.T.Jeen Joseph

For Respondents : Mr.M.Sakthi Kumar
No. 1 Government Advocate(Crl.Side)
No.2 : No appearance



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Crl.O.P.(MD)No.22204 of 2024

ORDER

This Criminal Original Petition has been filed to quash the STC No. 1190 of 2023 on the file of the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District.

2. The case of the prosecution is that there is a property dispute pending between the parties and as per the case the accused damaged the compound wall and used obscene words and attacked the second respondent with dire consequences. Therefore the second respondent lodged a complaint. Based on the said complaint given by the second respondent the first respondent registered a case in Crime No. 461 of 2022 for the offences under Sections 447, 294(b), 506(i) of IPC. Thereafter the first respondent after completing investigation filed final report and the same was taken on file by the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District in STC No. 1190 of 2023 and now the said final report is under challenge.

3. The learned counsel appearing for the petitioner would submit that based on the false complaint given by the second respondent the first

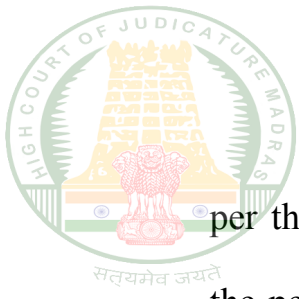


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respondent registered a case in Crime No. 461 of 2022 for the offences under Sections 447, 294(b), 506(i) of IPC. This petitioner is arrayed as A2 in this case and as per the prosecution case the entire allegations are against A1 and no any specific overt act has been attributed as against this petitioner who is arrayed as A2 and only based on bald and omnibus allegations the present charge sheet has been filed. In order to attract the provisions under Sections 447, 294(b), 506(i) of IPC there are no ingredients to constitute the offence. However the respondent police filed charge sheet against this petitioner. Further the learned Magistrate without perusing materials taken cognizance and hence the pending charge sheet is liable to be quashed.

4. Though notice served on the second respondent and name printed in the cause list, none appeared on behalf of the second respondent.

5. The learned Government Advocate(Crl.Side) appearing for the first respondent would submit that based on the complaint given by the second respondent, first respondent registered a case in Crime No. 461 of 2022 for the offences under Sections 447, 294(b), 506(i) of IPC. Thereafter the respondent police conducted detailed investigation and as



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per the investigation there are *prima facie* materials available as against the petitioner, hence they filed charge sheet and the trial Court also after taking into consideration that there are *prima facie* materials available to prosecute as against the accused taken cognizance for the offences under Sections 447, 294(b), 506(i) of IPC, therefore the petitioner has to face the trial, hence the petition is liable to be dismissed.

6. Heard both sides and perused the materials available on record.

7. In this case based on the complaint given by the second respondent the first respondent registered First Information Report in Crime No. 461 of 2022 for the offences under Sections 447, 294(b), 506(i) of IPC and thereafter the first respondent conducted investigation and as per the investigation there are *prima facie* materials, hence they they filed final report as against the accused. The petitioner herein has been arrayed as A2 in this case. According to the petitioner there are no specific allegations attributed as against the petitioner and the allegations are vague, general and omnibus allegations.



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8.This Court has perused the records. As per the records the main allegation are as against A1 who is none other than the husband of the petitioner. It is also admitted fact that there is a property dispute pending between the parties. Even as per the First Information Report, there is no any specific overt act attributed as against this petitioner and there are only bald, vague and omnibus allegations. So far as offence under Section 447 of IPC is concerned already there is a property dispute pending between the parties and civil suit for partition is also pending between the parties in O.S. No. 122 of 2010 before the Sub Court, Kuzhithurai, where the petitioner's mother is a party to the suit, therefore there are no records to show that the said disputed property was exclusively under the possession of the defacto complainant. Since the partition suit is pending and the husband of the petitioner is also one of the co-sharer and the same has to be tested by the civil Court, unless the rights of the parties are declared by the trial Court the parties cannot claim exclusive possession. It is settled principle of law that possession on one co-owner is deemed to be possession of the other co-owner in so far the joint family property is concerned. In the case on hand also a partition suit is pending, thereby the possession of the defacto complainant cannot be decided. In order to



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attract the offence under Section 447 of IPC the unauthorized entry into the possession of others property has to be established. But the possession of the defacto complainant itself is in dispute and it has to be decided by the civil Court in the pending partition suit. Therefore as discussed supra the offence under Section 447 of IPC would not attract as against this petitioner.

9. So far as offence under Section 294(b) of IPC is concerned there is no ingredients to constitute the offence and further there are no specific allegations as against the petitioner that he used obscene words in or near the public place which caused annoyance to the second respondent.

10. So far as offence under Section 506(i) of IPC is concerned there is a general allegation that the petitioner and other accused threatened to kill the second respondent and there are no materials to show that the petitioner stated the particular word and the same created fear in the minds of the defacto complainant.

11. Therefore there are no ingredients to constitute the offences under Sections 447,294(b) and 506(i) of IPC as against the petitioner.



Crl.O.P.(MD)No.22204 of 2024

Only bald, vague and omnibus allegations are charged against the petitioner and the learned Magistrate also without examining the materials based on the bald, vague and omnibus allegations has taken cognizance. For the bald, vague and omnibus allegations without any specific overt act and without any materials the petitioner need not face the ordeal of trial.

12. In view of the same, the Criminal original Petition stands allowed and the proceedings in STC No. 1190 of 2023 on the file of the learned Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District is hereby quashed in so far as the petitioner herein is concerned. Consequently connected miscellaneous petitions stand closed.

10.02.2025

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

1. The Judicial Magistrate No.I, Kuzhithurai, Kanyakumari District
2. The Inspector of Police
Marthandam Police Station
Kanyakumari District
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD)No.22204 of 2024



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Crl.O.P.(MD)No.22204 of 2024

P.DHANABAL,J.

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Crl.O.P.(MD)No.22204 of 2024

10.02.2025