



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved on : 18.09.2019
Orders Pronounced on : 30.09.2019

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Crl.R.C(MD).No.521of 2019

and

Crl.M.P(MD).Nos.6828 & 6829 of 2019

P.B.Chinnavenkata Raja ...Petitioner/Petitioner/Accused

Vs

State represented by
The Inspector of Police
Mannur Police Station
Tirunelveli District
(Crime No.41/2016)

...Respondent/Respondent/Complainant

PRAYER: Petition is filed under Section 397 r/w 401Code of Criminal Procedure, against the order dated 05.02.2019 made in Crl.M.P.No.6698 of 2017 in C.C.No.285 of 2017 on the file of the learned Judicial Magistrate No.V, Tirunelveli.

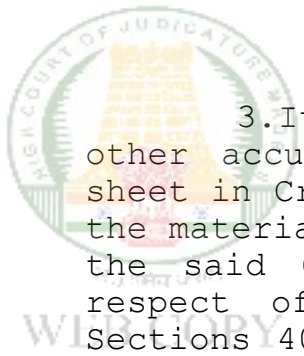
For Petitioner : Mr.V.Krishnamoorthy
For Mr.P.Athimoola Pandian

For Respondents : Mrs.M.Anantha Devi
Government Advocate (Crl.Side)

ORDER

This Criminal Revision Petition is filed against the order dated 05.02.2019, passed by the learned Judicial Magistrate No.V, Tirunelveli in Crl.M.P.No.6698 of 2017 in C.C.No.285 of 2017, dismissing the discharge petition filed by the petitioner herein under Section 239 of the Criminal Procedure Code.

2.According to the prosecution, the defacto complainant has filed a complaint on 02.02.2016 in respect of an incident which took place on 15.12.2015. The Police investigated the case and obtained statements from six listed witnesses. Originally the petitioner along with two other accused, viz., A2 and A3 were charged for the offences under Sections 406, 420 and 506(i) I.P.C, on the basis of the complaint given by the defacto complainant.



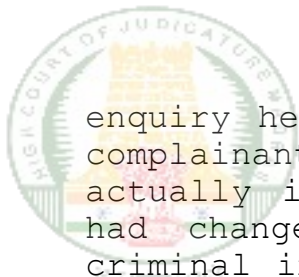
3.It appears that the petitioner herein along with the two other accused, had approached this Court, challenging the charge sheet in Crl.O.P(MD).No.4827 of 2016. This Court after going through the materials, acquitted all the petitioners therein and disposed of the said Criminal Original Petition by quashing the charges in respect of Crime No.41 of 2016 against the petitioners under Sections 406 and 420 I.P.C and quashed the charge sheet against A2 and A3 under Section 506(i) I.P.C. However, this Court directed the respondent police to investigate the charge under Section 506(i) I.P.C as against petitioner herein/A-1 alone in this crime number and complete the investigation and file a final report before the concerned Court as expeditiously as possible.

4.Pursuant to the order passed by this Court in the above Criminal Original Petition, the respondent police investigated the case and filed the charge against the petitioner for the offence under Section 506(i) I.P.C.

5.According to the prosecution, the defacto complainant had given a complaint on 02.02.2016 for the incident which took place on 15.12.2015 stating that there was a business transaction between the defacto complainant and the petitioner herein and in the said transaction several amounts were due to the defacto complainant. When the defacto complainant demanded the money back, the petitioner had threatened the defacto complainant with dire consequences. In the proceedings before the trial Court, the petitioner herein has filed a petition under Section 239 of Criminal Procedure Code to discharge him from the offence, as there are no materials to proceed against him and that the statement of the defacto complainant and the witnesses were contradictory and did not point to the involvement of the petitioner in the charge framed against him.

6.The learned counsel appearing for the petitioner would first of all submit that the complaint itself was given after 49 days on 02.02.2016 for the incident which is said to have been taken place on 15.12.2015, for which, there is no proper explanation. Therefore, on this ground alone the complaint is liable to be rejected as devoid of merits.

7.Further, the learned counsel for the petitioner would submit that the defacto complainant had mentioned two places where the incident had occurred and two different statements were given to the investigating officer. According to the counsel, on 12.04.2017, the defacto complainant stated that he was criminally intimidated by the petitioner on 15.12.2015 at about 11.00 a.m at the premises of Limenap Medical Private Limited belonging to the petitioner/accused situated at Madhavakurichi, Tirunelveli District. However, he further submitted that in order to implicate the brother of the petitioner, namely, Jeyasubramanian and his son Balaram, he stated with *mala fide* intention that they have also threatened him. The



enquiry held on 02.02.2016 and 08.02.2016. Originally, the defacto complainant has stated that Jeyasubramanian/A2 and Balaram/A3 had actually intimidated the defacto complainant and subsequently, he had changed his stand. The petitioner herein was charged for criminal intimidation. Learned counsel for the petitioner submitted that many such contradictions were found in the subsequent statements obtained from the defacto complainant after disposal of the Criminal Original Petition. In the subsequent statement, a different place of occurrence was mentioned by the defacto complainant by contradicting his earlier statement given on 15.12.2015. Originally there was no place of occurrence referred in the complaint dated 02.02.2016, but was subsequently inserted.

8.The learned counsel would draw the attention of this Court to Section 503 of the Indian Penal Code, which deal with criminal intimidation, which reads as follows:

"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".

9.He would further submit that there must be intent to cause alarm to the person (defacto complainant) or to any one in whom that person is interested.

10.In this case, no such alarm is noticeable in the complaint filed by the defacto complaint and therefore, the ingredients of Section 503 I.P.C are not available and hence, the petitioner cannot be charged for an offence under Section 503 I.P.C and punishment cannot be imposed for the criminal intimidation under Section 506 (i).

11.The learned counsel would draw the attention of this Court to the order of the learned Magistrate where the Magistrate has not taken the above aspect and overruled this vital factor and proceeded that there was prima facie case against the petitioner without any supporting material and therefore, he would submit that the order dismissing the discharge petition is liable to be interfered by this Court.

12.In fact, the learned counsel for the petitioner in support his contention, relied upon the decision of the *Hon'ble Supreme Court in Criminal Appeal No.759 of 2019(Vikram Johar Vs. The State of Uttar Pradesh and another)*. He relied on paragraph-27 of the Judgment, which is extracted hereunder.

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"27. Now, reverting back to Section 506, which is offence of criminal intimidation, the principles laid down by Fiona Shrikhande (supra) has also to be applied when question of finding out as to whether the ingredients of offence are made or not. Here, the only allegation is that the appellant abused the complainant. For providing an offence under Section 506 I.P.C, what are ingredients which have to be proved by the prosecution? Ratanlal & Dhirajlal on Law of Crimes, 27th Edition with regard to proof of offence states following:

The prosecution must prove.

- (i) that the accused threatened some person.
- (ii) that such threat consisted of some injury to his person, reputation or property or to the person, reputation or property of some one in whom he was interested.
- (iii) that he did so with intent to cause alarm to that person'; or to cause that person to do any act which he was not legally bound to do, or omit to do any act which he was legally entitled to do as a means of avoiding the execution of such threat. A plain reading of the allegations in the complaint does not satisfy all the ingredients as noticed above".

13. The learned counsel would also rely on yet another decision of the Madras High Court, dated 29.02.1988 in the case of Noble Mohandass Vs. State. He would rely on Paragraph -7, which is again extracted hereunder;

"7. As far as the offence under Section 506(2) is concerned, the learned counsel for the revision petitioner contended that the threat was not a real one, that it was of the kind of words which are currently and frequently used by people when they are angry and that further the threat was not spoken to by P.W.3 and P.W.4 who by that time had already come to the scene of occurrence. It is, in fact, found from the records that the threat would have been lashed out after P.Ws.3 and 4 came to the place and separated both the husband and wife. Therefore, the evidence of P.W.1 should have been corroborated by the evidence of P.W.3 and P.W.4 who were necessary witnesses to the occurrence. Since they did not corroborate the testimony of P.W.1 in this aspect, the offence cannot be held to be proved. 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 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. In fact, P.W.1 when she filed the complaint to the police officer, did not express any fear for her life nor asked for any protection. Therefore, the offence under Section 506(2) is not made out.

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14.Further he would rely on yet another decision of the Hon'ble Supreme Court in Criminal Appeal No.141 of 2015 (Manik Taneja & another Vs.State of Karnataka & another). He relied upon paragraph-15 of the Judgment, which is extracted hereunder;

" 15.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 minds of the second respondent causing obstruction in discharge of his duty. As far as comments posted on the facebook are concerned, it appear 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 I.P.C".

15.The learned counsel would further submit that time and again the Courts have uniformly held that the threat must be with an intention to cause alarm to the complainant. Mere expression of words does not mean to cause criminal intimidation, as per the definition of the Section. Therefore, he would submit that the trial Court has miserably failed to address the fundamental issues and dismissed the discharge petition.

16.Per contra, the learned Government Advocate (Crl.Side) appearing for the respondent police would submit that the learned Magistrate has gone through the entire materials and found that there are *prima facie* materials available against the petitioner and dismissed the discharge petition and the same does not warrant interference from this Court. In fact, the learned Government Advocate (Crl.Side) relied on the decision of the Hon'ble Apex Court reported in 2014 (1) MLJ (Crl) Page 201 more specifically paragraph

22 and 23 which are extracted hereunder;

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"22.Following are the principles laid down by the Apex Court guiding the deal with the application for discharge of accused.

1.The Court would find prima facie case against the accused that there is sufficient ground for proceeding against him.

2.The Court need not take up a roving enquiry at the stage of framing of charges.

3.The Court ought to discern a strong suspicion over the existence of facts constituting offence as against the accused.

4.There is no necessity for the Court to evaluate the probative and evidentiary vale of the neither materials nor oral evidence placed by the prosecution and see whether they would be adequate to convict the accused.

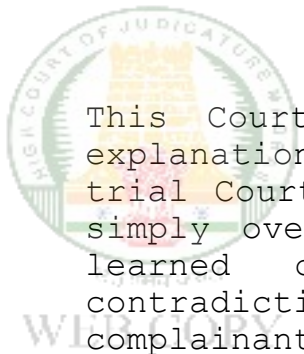
5.The Court is not at a duty at the intermediate stage to speculate whether allegations are trust or false to discharge.

6.Adverting to the acts of the present case, following the principles laid down by the Hon'ble Supreme Court, a deep study of materials on record would show that there are prima facie materials available against the petitioner to frame charge and a strong suspicion about existence of fact constituting offence against the petitioner is also discernible. Whatever be the contention of the petitioner, they could be agitated very well by him at the trial at the final hearing of the case. In such view of this matter, I find no merits in the revision which suffers dismissal. This point is answered accordingly".

17.According to the learned Government Advocate (Crl.Side), mere existence of evidence is enough to proceed with framing the charges and this Court, at that stage shall not interfere with the said order. In this case, it is always open to the petitioner to prove his innocence in the trial and it is not open to him to seek discharge from the charge at the very threshold.

18.This Court has considered the submission advanced by the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the State.

19.At the outset, it is seen that the defacto complainant has made initial complaint against the petitioner/accused on 02.02.2016 for the incident said to have happened on 15.12.2015 with a delay of 49 days. In fact, there was no proper explanation at all for such delay of 49 days in preferring the complaint against the petitioner.



This Court is of the view that, such long delay without any explanation itself is fatal to the prosecution. In fact, the learned trial Court has not dealt with the issue in proper perspective and simply overruled the same. Further as rightly contended by the learned counsel for the petitioner, there are material contradictions between the first statement given by the defacto complainant on 15.12.2015 and the subsequent statement given by the defacto complainant on 12.04.2017 under Section 161(3) Cr.P.C. The entirety of the evidence collected by the investigation from the list of witnesses, case for criminal intimidation cannot be said to have been made out against the petitioner. Simple intimidation without real intention to cause alarm cannot bring the act within the ambit of criminal intimidation to make out a charge under Section 506(i) I.P.C. There must be an additional intent to cause alarm. In this case, this Court is unable to notice such alarm or intention to cause alarm at the instance of the petitioner/accused.

20.Unfortunately, the trial Court which dealt with discharge petition has not given proper reason as to why the discharge petition could not be considered favourably. On the other hand, the reason for dismissing the discharge petition is legally unacceptable, as the same is not supported by materials which were made available before the trial Court. When this Court quashed the charges against all the accused in respect of the offences under Sections 406 and 420 I.P.C and directed the investigating officer to reinvestigate the case in respect of the petitioner alone under Section 506(i) I.P.C, the trial Court felt that this Court has directed for framing of charges against the petitioner under Section 506(i) I.P.C. However, such direction which was issued by this Court was on a preliminary finding that some materials may exist to proceed against the petitioner for the offence under Section 506(i) I.P.C. But this does not mean that the investigating agency is under any compulsion to frame a charge against the petitioner under Section 506(i) I.P.C.

21.In this case, this Court is of the considered opinion that there are no materials available, much less any substantial materials, in order to frame charge against the petitioner punishable under Section 506(i) I.P.C, It appears to be a civil dispute with regard to business transaction between the defacto complainant and the petitioner herein and mere exchange of words by the petitioner cannot be construed as criminal intimidation to bring the offence within the ambit of Section 503 I.P.C. The trial Court has merely misconstrued the materials deeming it to be a case against the petitioner and has chosen to proceed against him.

22.For the reasons stated above, the order passed by the trial Court made in C.C.No.285 of 2017 is hereby set aside and the discharge petition filed by the petitioner stands allowed. Accordingly, the Crl.M.P.No.6698 of 2017 is allowed and the



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23. In the result, this Criminal Revision stands allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar(CS-)

msa

To

1. The Judicial Magistrate No.V
Tirunelveli.
2. The Inspector of Police
Mannur Police Station
Tirunelveli District
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

COPY TO:
THE SECTION OFFICER,
CRIMINAL SECTION,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.
(2 COPIES)

+1. C.C. to M/S.P.Athimoola Pandian, Advocate SR.No. 90318

order made in
CrI.R.C(MD) .No.521of 2019
and
CrI.M.P(MD) .Nos.6828 & 6829 of 2019
30.09.2019

JM/15.10.2019/8P/7C