

(2017) 02 MAD CK 0250

In the Madras High Court

Case No : 9700 of 2010 and M P (MD) Nos 1 of 2010 and 1,2 of 2011

Seenikumar Selvanayagam, & Ors.

APPELLANT

Vs

State represented by Inspector of Police, Perumalpuram
Police Station, & Anr.

RESPONDENT

Date of Decision : 08-02-2017

Acts Referred:

[Code of Criminal Procedure, 1973](#), [Section 482](#) - Saving of inherent powers of High Court
[Indian Penal Code, 1860](#), [Section 34](#), [Section 511](#), [Section 17](#)

Citation : (2017) 02 MAD CK 0250

Hon'ble Judges : P.Kalaiyaran

Bench : SINGLE BENCH

Advocate : P.Kalaiyaran

Final Decision : Allowed

Judgement

1. This criminal original petition has been filed under Section 482 of Cr.P.C., praying to call for the records in P.R.C.No.65 of 2010 on the file of the Judicial Magistrate No.1, Tirunelveli and quash the same
2. It is averred in the petition that the petitioners have been charge sheeted for the offences under Section 306 read with 511 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment Woman Act, 1998 read with 34 IPC.
3. The case of the prosecution is that the defacto complainant was working in the college, where the first petitioner is the Secretary of the college and second and third petitioners are the colleagues of the defacto complainant. The petitioners 1 to 3 indulged in harassment by giving memo to the defacto complainant for the mistake committed by her. They also harassed her by changing her seat. Due to such harassment, she attempted to commit suicide by poisoning on 24.04.2010.
4. The petitioners contend that the alleged offences are not made out and to

make out a case under Section 306 read with 511 of IPC, there shall be a death. To attract, Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998, there should be any indecent conduct or act by a man which causes or is likely to cause intimidation, fear shame or embarrassment, including abusing or causing hurt or nuisances or assault or use of force as defined under Section 2(a) of the Act. Therefore, the proceedings as against the petitioners are liable to be quashed.

5. The learned counsel for the petitioners advanced his arguments mainly on the basis of the averments made in the petition.

6. The learned Government Advocate (criminal side) appearing for the first respondent, per contra, contends that offences as alleged by the prosecution are made out from the statement of witnesses and therefore, this criminal original petition is to be dismissed.

7. The learned counsel for the second respondent reiterated the arguments advanced by the learned Government Advocate (criminal side).

8. The petitioners are accused 1 to 3 in the case. The charges alleged as against the petitioners are under Section 306 read with 511 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment Woman Act, 1998 read with 34 IPC. This Court perused the first information report, charge sheet and statement of witnesses. The case of prosecution is that the defacto complainant has been working in a college and the petitioners being the Secretary and colleagues of the defacto complainant, harassed her by changing her seat often and also by issuing memo for the alleged mistake committed by her in her official duty. She attempted to commit suicide and she is alive after treatment. As rightly pointed out by the learned counsel for the petitioner, there should be a death to make out a case under Section 306 read with 511 of I.P.C.

9. The learned counsel for the petitioner cited the Hon''ble Supreme Court Judgment in Satvir Singh and Others V. State of Punjab reported in 2002 SCC (Cri) 48. In this Case, the Hon''ble Supreme Court has held in para 7 as follows: "At the outset we may point out that on the aforesaid facts no offence linked with Section 306 IPC can be found against any of the appellants. The said section penalises abetment of suicide. It is worded thus: If any person commits suicide, whoever abets the commission of such suicide, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. It is a unique legal phenomenon in the Indian Penal Code that the only act, the attempt of which alone will become an offence. The person who attempts to commit suicide is guilty of the offence under Section 309 IPC whereas the person who committed suicide cannot be reached at all. Section 306 renders the person who abets the commission of suicide punishable for which the condition precedent is that suicide should necessarily have been committed. It is possible to abet the commission of suicide. But nobody would abet a mere attempt to commit suicide. It would be preposterous if law could

afford to penalise an abetment to the offence of mere attempt to commit suicide."

As per the above judgment, no one would abet a mere attempt to commit suicide. Thus, the offence under Section 306 read with 511 of IPC is not attracted as against the petitioners.

10. The other offences alleged to have been committed is Section 4 of Tamil Nadu Prohibition of Harassment of Woman Act, 1998. As per this Section, who ever commits or participates in or abets harassment of woman is punishable. Section 2(a) defines harassment, which reads thus: "2(a) - "harassment" means any indecent conduct or act by a man which causes or is likely to cause intimidation, fear shame or embarrassment, including abusing or causing hurt or nuisances or assault or use of force"

In this case, there is absolutely no allegation of any indecent conduct or act as against the petitioners. Therefore, the above said offence is also not attracted as against the petitioners. Therefore, the offence alleged by the prosecution as against the petitioners are not made out and the proceedings are liable to be quashed for the ends of justice. Therefore, by invoking the inherent jurisdiction of this Court under Section 482 of Cr.P.C., the proceedings in P.R.C.No.65 of 2010 is liable to be quashed as against the petitioners.

11. Accordingly, this criminal original petition is allowed. The proceedings in P.R.C.No.65 of 2010 on the file of the Judicial Magistrate No.1, Tirunelveli are quashed as against the petitioners. Consequently, connected miscellaneous petitions are closed.