

Pushpa, Vs. Ravi and ors.

Pushpa, Vs. Ravi and ors.

SooperKanoon Citation : sooperkanoon.com/837777

Court : Chennai

Decided On : Mar-08-2007

Reported in : 2007CriLJ4747

Judge : R. Regupathi, J.

Acts : Indian Penal Code (IPC) - Sections 159, 160, 294 and 323

Appeal No. : Crl. O.P. No. 9293 of 2005 and Crl. M.P. No. 3328 of 2005

Appellant : Pushpa, ;veerappan and Sumathi

Respondent : Ravi and ors.

Advocate for Def. : N.A. Nissar Ahmed, Adv. R1 to R4 and ;N. Kumanan, Government Adv. for R5

Advocate for Pet/Ap. : N. Manokaran, Adv.

Judgement :

ORDER

R. Regupathi, J.

1. This petition is filed, seeking for a direction to quash the proceedings pending against the petitioners/A-party in STC.No.602 of 2004 on the file of the learned Judicial Magistrate, Kodumudi.

2. An occurrence took place in front of the residence of `A' party on 04.12.2003 and the `A' party petitioners have been assaulted by `B' party/respondents. On the report given by the petitioners, a case in Crime No. 167 of 2003 has been registered for an offence under Sections 323 and 294(b) IPC. While so, a report has been given by the respondent/B-party on 11.12.2003 for the occurrence, which had taken place on 04.12.2003, as if they have been assaulted by the petitioners/`A' party. The case has been taken on file by the 5th respondent in Crime No. 169 of 2003. On conclusion of the investigation, a final report has been filed for an offence punishable under Section 160 IPC and aggrieved against that the present petition has been filed before this Hon'ble Court to quash the proceedings.

3. Learned Counsel appearing for the petitioners submits that on the strength of the complaint given by the petitioners/`A' party for the occurrence which had taken place on 04.12.2003, a case in Crime No. 167 of 2003 under Sections 323 and 294(b) has been registered. The case would have been investigated, since it has been given earlier and since the petitioners are victims and aggrieved. Instead the 5th respondent entertained the complaint of the respondents/`B' party through a complaint dated 11.12.2003 and has erroneously come to a conclusion as if both the parties indulged in a quarrel, resulting in the filing of a final report under Sections 160 IPC.

4. To constitute an offence under Section 160 IPC, three ingredients must be satisfied:

A reading of Section 159 IPC would clearly indicate that in order to bring home the guilt of the accused for an offence of affray, the prosecution should satisfy the three essentials. Firstly, fighting must be between two or more persons. Secondly, fighting must take place in a public place, and thirdly, such fighting must also result in disturbance of public peace. In the absence of even one of these ingredients, it cannot be stated that there was either an affray or the accused facing the trial, should be held responsible.

5. Learned Counsel appearing for the petitioners submits that the occurrence had taken place in front of the house of the petitioners/`A' party and it is not a public

place. `B' party/respondents have gone to the house of the petitioners and assaulted them, for which, on the next day itself a case has been registered. Prima facie on the face of the said allegation, the respondents are aggressors. This cannot be categorised as fighting between two groups. One cannot imagine that the fight had taken place in a public place and it has resulted in the disturbance of public peace.

6. Learned Counsel appearing for the petitioners relied on a case reported in 2002 LW CrL 532 (Selvaraj and Kandammal v. The State) to substantiate his contention.

Occurrence has taken place in the house of the petitioners, and thus, it was not in a public place - Members, who constituted the B Party, have gone to the house of the petitioners and have attacked them, and were found to be the aggressors and there was no fighting between the parties and there was disturbance of public peace, and thus, in the instant case, all the three ingredients which were necessary to constitute affray, were absent.

7. I have heard the learned Counsel for the respondents/`B' Party. So far as the place of occurrence is concerned it has not been disputed. The counsel for `B' party also equally agreed that it is only a private fight. It has never resulted in the disturbance of public peace. In such circumstances, an offence under Section 160 IPC may not arise at all.

8. Learned Government Advocate submits that on conclusion of the investigation of both the cases in Crime Nos.167 and 169 of 2003 a final report has been filed by the 5th respondent under Section 160 IPC and the grounds raised by the petitioners may have to be agitated only during the course of trial.

9. I have heard the submissions made.

10. The occurrence alleged to have taken place during 2003. The offence of both the cases in Crime Nos.167 and 169 of 2003 are under Sections 294(b) and 323 IPC. Both the counsel appearing for `A' party and `B' party submits that harmony exists between the parties as on date. Even on a perusal of the materials available on record, I do not find any materials to substantiate the offence under Section

160 IPC.

11. The three ingredients to constitute an offence under Section 160 IPC is not available for the instant case. In such circumstances, I am of the view that the continuation of the proceedings will be an abuse of process of Court and therefore, the proceedings pending against the petitioners in STC. No. 602 of 2004 on the file of the learned Judicial Magistrate, Kodumudi is hereby quashed. The petition is ordered accordingly. Consequently, connected Crl.M.P is closed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com