



Citation : CDJ 2011 MHC 6859

Court : Before the Madurai Bench of Madras High Court

Case No : CRL OP(MD) No. 14098 of 2011

Judges : THE HONOURABLE MR. JUSTICE S. NAGAMUTHU

Parties : Balaji & Another Versus State rep by the Inspector of Police Siruganur Police Station

Appearing Advocates : For the Petitioners: M/s. S. Deenadhayalan, Advocate. For the Respondent: K.S. Duraipandian, Additional Public Prosecutor.

Date of Judgment : 09-11-2011

Head Note :

Indian Penal Code - Section 353 -

Judgment :

1. An important question, "In the State of Tamil Nadu, whether an offence punishable under Section 353 of the Indian Penal Code is bailable or non-bailable under the First Schedule to The Code of Criminal Procedure, 1973?" has arisen for consideration in this Criminal Original Petition.
2. Apprehending arrest at the hands of the respondent - police in Crime No.285 of 2011, on the file of the respondent police for offences under Sections 294(b) and 353 of the Indian Penal Code, the petitioners have come up with this Criminal Original Petition, seeking Anticipatory Bail. According to the petitioners, the offence punishable under Section 353 of the Indian Penal Code is non-bailable and, therefore, this Criminal Original Petition is maintainable.
3. During the course of hearing, a doubt arose as to whether the said offence is non-bailable despite the passing of The Indian Penal Code and The Code of Criminal Procedure [Tamil Nadu Amendment] Act, 2006, by the Tamil Nadu Assembly. This doubt, therefore, needs a detailed debate.
4. Prior to the introduction of the Code of Criminal Procedure (Amendment) Act, 2005 (Central Act 25 of 2005), undoubtedly, an offence punishable under Section 353 of the Indian Penal Code was bailable as per the First Schedule to the Code of Criminal Procedure. As per the Central Act 25 of 2005, the First Schedule was amended, by which the offence punishable under Section 353 of the Indian Penal Code was classified as non-bailable. Similarly, by the same Amendment, the entries relating to Sections 274, 324, 332 and 333 of IPC were also amended and the said offences were also classified as non-bailable offences. The said Act received the assent of the President of India on 23.06.2005 and the same was published in the Gazette of India on 23.06.2005. As per Section 1 of the Said Act, it shall come into force on such date as the Central Government may, by Notification in the Official Gazette appoint. Accordingly, the Central Government issued Notification under S.O.No.923(E), dated 21.06.2006, thereby appointing 23.06.2006 as the crucial date for bringing into force the provisions of the Central Act 25 of 2005, except Sections 16, 25, 28(a), 28(b), 38, 42(a), 42(b), 42(f)(iii) & (iv) and 44(a).
5. Section 42(f) (vii) relates to the amendment in the First Schedule thereby classifying the offence under Section 353 of the Indian Penal Code as non - bailable. As per the above said Notification, the amendments classifying the offences under Sections 274, 332, 333 and 353 have come into force w.e.f. 23.06.2006, and thus, these offences are non-bailable. Section 42(f) (iii) relates to the entry relating to offence punishable under Section 324 of the Indian Penal Code. Since it has not been notified, the offence punishable under Section 324 of the Indian Penal Code remains to be bailable.
6. After the introduction of the Central Act 25 of 2005, various Advocates Associations and the general public of the State of Tamil Nadu made representations to the Government of Tamil Nadu that the Amendments, referred to above, may result in hardship to the clients and general public at large. They further represented to the State Government to restore the earlier position which stood prior to the coming into force of the Central Act 25 of 2005 on 23.06.2006. After having

considered the above representations, the Government of Tamil Nadu decided to amend certain provisions of the Code of Criminal Procedure. Accordingly, in the Tamil Nadu Legislative Assembly, a Bill, known as Indian Penal Code and the Code of Criminal Procedure (Tamil Nadu Amendment) Bill, 2006, was introduced on 02.09.2006. As per Rule 130 of the Tamil Nadu Legislative Assembly Rules, the said Bill was also published in the Gazette for general information. Thereafter, the said Bill was passed in the Tamil Nadu Assembly as an Act on the same day. By the said Act, the Code of Criminal Procedure, as it stood amended as per the Central Act 25 of 2005, was sought to be amended by the State. As per the said Act, the above offences under Sections 332, 333 and 353 were sought to be restored as bailable offences. It is contended before this Court that as per the said Tamil Nadu Amendment Act 2006, an offence punishable under Section 353 of the Indian Penal Code is bailable.

7. At this juncture, I may state that the Code of Criminal Procedure falls in the concurrent list of the Seventh Schedule to the Constitution of India. The Code of Criminal Procedure, 1973, being a Central enactment, can be amended by the State, but, the said amendment shall come into force provided the Amending Act has received the assent of the President of India [vide Article 254 of the Constitution of India]. Insofar as the Indian Penal Code and the Code of Criminal Procedure [Tamil Nadu Amendment] Act, 2006, is concerned, the same has not received the assent of the President and, therefore, the said amendment will not prevail in the State of Tamil Nadu, until it receives the assent of the President. As a matter of fact, as per the very same Amending Act, Section 25-A of the Code of Criminal Procedure was omitted by the State of Tamil Nadu. Whether the said Act had received the assent of the President or not came up for consideration in *Thamizharasan v. State of Tamil Nadu* reported in 2009 (2) L.W. (cr.) 1429, before a Division Bench of this Court, to which one of us [JUSTICE S.NAGAMUTHU] was a party. When the said case was heard by the Division Bench on 26.11.2009, it was reported by the learned Additional Advocate General that the said Tamil Nadu Amending Act had not received the assent of the President of India. An observation to this effect has been made in Paragraph No.8 of the said Judgment. Even after the said Judgment, Indian Penal code and the Code of Criminal Procedure [Tamil Nadu Amendment] Act, 2006 has not received the assent of the President of India, and thus, the said Act does not prevail in this State. Therefore, as per the Central Act 25 of 2005, in the State of Tamil Nadu too, the offences punishable under Sections 274, 332, 333 and 353 of IPC are only non-bailable offences. In such view of the matter, the Criminal Original Petition for Anticipatory Bail under Section 438 of the Code of Criminal Procedure is maintainable.

8. Now, turning to the facts of the case, except mere words of threat, there is no other serious overt act attributed to the petitioners. So, I am of the view that the petitioners are entitled for Anticipatory Bail.

9. In the result, the Criminal Original Petition is ordered and the petitioners are ordered to be released on bail, in the event of arrest or on their appearance before the learned Judicial Magistrate, Lalgudi, on executing a separate bond for a sum of Rs.10,000/- (Rupees Ten Thousand only) with two sureties each for a like sum to the satisfaction of the respondent police or the police officer who intends to arrest or to the satisfaction of the learned Magistrate concerned and on further condition that the petitioners shall report before the respondent police weekly once on all Mondays for a period of four weeks. The petitioners shall comply with the condition stipulated under Section 438 of the Code of Criminal Procedure scrupulously.