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Crl OP No.20261 / 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **06.04.2023**
PRONOUNCED ON : **13.04.2023**

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 20261 of 2019
and
Crl.M.P. Nos. 10414 & 16611 of 2019

D.Rengarajan

... Petitioner

Versus

1.The State of T.N.rep.,by
The Inspector of Police
T-7, Tank Factory Police Station,
Avadi, Chennai – 54.

2.Mr.Murugan

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records in C.C. No. 350 of 2018 on the file of the learned Judicial Magistrate, Ambattur pertaining to Crime No.1514 of 2017 on the file of the respondent police and quash the same.

For Petitioners : Mr. K.M. Subramanian.

For Respondents : Mr. A. Damodaran,
Additional Public Prosecutor for R1.

No appearance for R2.



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ORDER

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2.It is alleged in the final report that the defacto complainant viz., Murugan and one Nallasivam were in partnership and running canteens at Veltech Engineering College, Avadi; that the defacto complainant and the said Nallasivam(LW2) had difference of opinion and the defacto complainant handed over the canteens to the said Nallasivam(LW2); that Nallasivam(LW2) promised to pay the expenses incurred by the defacto complainant; that while so, the petitioner undertook to run the canteens and paid Rs.4,50,000/- to the said Nallasivam on 01.01.2016 and promised to pay the balance sum of Rs.1,75,000/-; that thereafter the petitioner did not make the payments of as agreed; that when the defacto complainant demanded money from Nallasivam(LW2), he had asked him to contact the petitioner who was then running the canteens; that the petitioner had obtained Rs.4,30,000/- from defacto complainant and handed over the canteens by concealing the fact that the contract period



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for the canteen ended soon and; that the petitioner did not hand over the property of the canteens to the defacto complainant and; that when the defacto complainant demanded the return of money and the property of the canteens, the petitioner is alleged to have threatened him with dire consequences.

3.The learned counsel for the petitioner would submit that a pure civil dispute is sought to be given a criminal colour. The dispute was actually between the defacto complainant and one Nallasivam. They had been running canteens together and when dispute arose between them the petitioner undertook to run the canteen. Thereafter, when the defacto complainant requested the petitioner to hand over the canteen to him, he had handed over the canteen after receiving the money spent by him for renovating the canteens. The allegation that the petitioner had misrepresented by concealing the fact that the contract period of the canteen was to end soon is false. Both the defacto complainant and Nallasivam(LW2) were already running the canteen and it is not as if that they were not aware of the contract period. All the allegations only point out to a dispute in the contract entered into between the defacto complainant, the said Nallasivam (LW2) and the petitioner.



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4.The learned Additional Public Prosecutor submitted that there are allegations in the impugned final report to show that the offences alleged are made out. The points raised by the petitioner have to be adjudicated before the trial Court and hence prayed for dismissal of the quash petition.

5.Though notice has been served on the second respondent / defacto complainant, none has entered appearance on his behalf.

6.This Court on perusal of the impugned final report finds that there was a contract between the defacto complainant and one Nallasivam(LW2) agreeing to run canteens at Veltech Engineering College, Avadi together. Difference of opinion arose between them. Nallasivam(LW2) agreed to take over the canteens and pay the amount due to the defacto complainant. While so, the petitioner agreed to run the canteens and had paid Rs.4,50,000/- to the said Nallasivam. Thereafter, it appears that the defacto complainant approached the said Nallasivam for payment, who in turn directed him to the petitioner. The petitioner agreed to hand over the business of running the canteens to the defacto complainant on receipt of Rs.4,50,000/-. Thereafter it appears that the



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defacto complainant paid a sum of Rs.4,30,000/-. The only allegation is that the petitioner had suppressed the fact that the contract period was to end soon and obtained money from the defacto complainant. This allegation appears to be highly improbable. The defacto complainant and the said Nallasivam(LW2), admittedly, were running canteens for several years in the said college. In such circumstances, it cannot be said they were not aware of the terms of contract with the said college. In such circumstances, the allegation that the petitioner suppressed the fact that the contract period was to end soon appears to be highly improbable and false. That apart the other allegation relates to the dispute with regard to the contract entered into between the parties. Thus, the allegations do not constitute any of the offences. The allegations with regard to threat and the allegations with regard to the offence under Section 294 (b) of the Indian Penal Code do not attract the said offence. In this regard, we rely upon the Judgment of the Hon'ble Supreme Court in ***N.S.Madhanagopal & Anr. Vs. K.Lalitha*** reported in ***2022 LiveLaw (SC) 844***, wherein it was held as follows;

*“6....It has to be noted that in the instance case,
the absence of words which will involve some*



lascivious elements arousing sexual thoughts or feelings or words cannot attract the offence under Section 294(b). None of the records disclose the alleged words used by the accused. It may not be the requirement of law to reproduce in all cases the entire obscene words if it is lengthy, but in the instant case, there is hardly anything on record. Mere abusive, humiliating or defamative words by itself cannot attract an offence under Section 294(b) IPC. To prove the offence under Section 294 of IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the appellants accused annoyed others, it can not be said that the ingredients of the offence under Section 294(b) of IPC is made out....”

7. Thus the offence under Section 294(b) of the Indian Penal Code on the allegations in the impugned final report is not made out. There is no allegation of real threat. Hence the offence of criminal intimidation is not made out. Since the allegations are civil in nature, the impugned final report is liable to be quashed and hence, quashed.



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8. Accordingly, this Criminal Original Petition is allowed by quashing the proceedings in C.C. No. 350 of 2018 on the file of the learned Judicial Magistrate, Ambattur pertaining to Crime No.1514 of 2017 on the file of the respondent police. Consequently, the connected Miscellaneous Petitions are closed.

13.04.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Inspector of Police
T-7, Tank Factory Police Station,
Avadi, Chennai – 54.
2. The Judicial Magistrate,
Ambattur.
3. The Additional Public Prosecutor,
High Court of Madras,
Chennai.



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SUNDER MOHAN, J

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