



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD) .No.3918 of 2014

and

M.P. (MD) Nos.1 and 2 of 2014

G.Mari Rajan

..Petitioner/Sole Accused

Vs.

1.The Inspector of Police,
Oomachikulam Police Station,
Madurai District.
Crime No.343 of 2013

.. Respondent/Complainant

2.Mrs.Nagajothi

..Respondent/Defacto Complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records and quash the final report filed against the petitioner herein in C.C.No.512 of 2014 on the file of the Additional Mahila Court, Madurai.

(Amended as per the order dated 30.03.2015 made in M.P. (MD) No.1 of 2015)

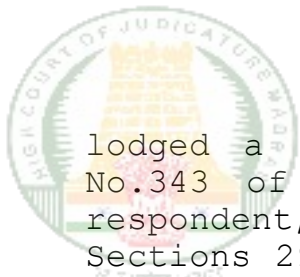
For Petitioner : Mr.D.Selvam for
Mr.R.M.Makesh Kumaravel

For Respondents : Mr.V.Neelakandan, APP for R1
Service awaited for R2

O R D E R

This petition is filed to quash the criminal proceedings in C.c.No.512 of 2014 on the file of the Additional Mahila Court, Madurai, having been taken cognizance for the offence under Sections 294(b) of I.P.C. and Section 4 of Tamil Nadu Prohibition of Women Harassment Act against the petitioner.

2.The case of the prosecution is that the defacto complainant studied Nursing at the petitioner's Nursing Institute during 2007-08. Since her father died, she has been appointed on compassionate ground in the same Institute from July 2009. During that time, the petitioner started compelling her to marry him. Thereafter, she got married with another person viz., C.Shanmugam. Even, after the marriage, the petitioner harassed the defacto complainant by phone and also through messages. Therefore, she



lodge a complaint and the same has been registered in crime No.343 of 2013 and charge sheet has been laid by the first respondent, which was taken cognizance for the offence under Sections 294(b) of I.P.C. And Section 4 of Tamil Nadu Prohibition of Women Harassment Act.

WEB COPY

3.The learned counsel appearing for the petitioner would submit that the second respondent/defacto complainant lodged the complaint on 17.05.2013 alleging that when she was working in the petitioner's institution during the year 2009, she was compelled to marry the petitioner. When she got married with one Shanmugam, the petitioner harassed her through phone and also by messages. Whereas, she developed the allegations when her statement was recorded under Section 161(3) of Cr.P.C., that the petitioner came to her house on 16.05.2013 and abused her with filthy language. It is nothing but an afterthought and completely with different version, charge sheet has been laid as against the petitioner.

4.He would further contend that the offence under Section 294(b) of I.P.C. is not at all attracted against the petitioner, since the allegation itself is bald and vague. When there is no specific allegations uttered by the petitioner, he cannot be charged for the offence under Section 294(b) of I.P.C. Further, he would submit that no other witnesses, except the second respondent even whispered about the alleged occurrence as alleged by the prosecution. Further, the list of witnesses are non other than the own husband and brother of the second respondent. No independent witness has been examined by the first respondent. Therefore, he prayed for quashing the entire criminal proceedings.

5.Per contra, the learned Additional Public Prosecutor would submit that when the defacto complainant was working under the petitioner during 2009, the petitioner harassed her and also compelled her to marry him. When she got married with another person, he came to her house and abused her with filthy language and hence, the offence under Section 294(b) of I.P.C. is clearly made out as against the petitioner. Further, he also compelled the defacto complainant to marry him and there are clinching evidence to connect the accused for the offences under Section 294 (b) of I.P.C and Section 4 of Tamil Nadu Prohibition of Women Harassment Act and as such, the present petition has been filed only to drag the proceedings and the grounds raised by the petitioner have to be tested during the trial and hence, he prayed for the dismissal of the petition.

6.Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the State and perused the materials available on record.

7.Admittedly, the defacto complainant had worked for sometime during the year 2009 in the petitioner's institution. When she was working under the petitioner, she was compelled to



marry the petitioner. However, she got married with one Shanmugam. It is seen from the statements recorded under Section 161(3) of Cr.P.C. that no one even whispered as to when the marriage took place between the second respondent and Shanmugam. Therefore, the complaint itself is a belated one. Further, it is also seen that the charge sheet has been laid with the different set of allegations which are completely different from the First Information Report. There is also no whisper about the petitioner's visitation to the house of the defacto complainant and abusing her with filthy language and there is also no such allegation even in the FIR. In the FIR, it has been stated that the petitioner harassed the defacto complainant and compelled her to marry him. Further, the first respondent did not even examine any of the independent witnesses to sustain the charge under Section 294(b) of I.P.C. The definition of offence under Section 294(b) of I.P.C. reads as follows:

"294. Obscene acts and songs - Whoever, to the annoyance of others-

(a)

(b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."

8. It is seen from the above, the said offence has to be occurred in a public place. The first respondent failed to examine any of the independent witnesses and failed to substantiate the charge, since no neighbour of the defacto complainant has been examined and no specific words stated by the defacto complainant as uttered by the petitioner. Therefore, the said charge cannot be sustained. In this regard, the learned counsel appearing for the petitioner relied upon the judgment reported in **2008 Cri.L.J.1233 - Preethimon V. State of Kerala**, wherein, the Kerala High Court has held as follows:

"8. I am of the view that the words allegedly uttered by the accused cannot be said to be obscene words. I respectfully follow the decisions referred to above.

9. Learned Public Prosecutor submitted that it is also stated in the FIR as follows:

(Vernacular matter omitted Ed.)

Learned Public Prosecutor laid stress on the word (Vernacular matter omitted ... Ed.) and contended that there are allegations in the FIR that the accused persons uttered obscene words. In answer to this contention, Sri.K.Ramakumar submitted that the vague allegation that there was utterance of obscene words in the FIR is not



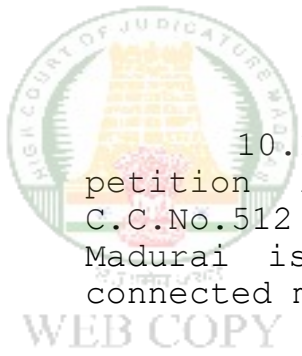
enough to constitute an offence under Section 294 (b) IPC.

10. He relied on the decision in Santhilal v. Parameswaran Pillai (1988 (2) KLT Short Notes Case No.112 at page 74), wherein it was held:

"It is not stated either in the complaint or sworn statement what the words used were, while alleging an offence under S.294 IPC. Without that, it is not possible for a court to consider whether the offence under S.294 is attracted."

11. A vague or general statement in the FIR that the accused showered obscene words is not enough to constitute an offence under Section 294 (b). It is necessary to state the words uttered by the accused. The prosecution would not be justified in bringing in the evidence for the first time the words allegedly spoken to by the accused, when the same is not recorded in the First Information Statement in a case instituted upon police report. The complaint or the FIR, as the case may be, shall contain the words spoken to by the accused, which, according to the prosecution, would attract the offence under Section 294(b) of the Indian Penal Code. Or else, there is every possibility of evidence being tendered putting forth any words as the prosecution witnesses may wish to put forward improving upon or adding to the allegation in the complaint or FIR causing great prejudice to the accused and depriving his right to have a fair trial."

9. In the said decision, the Kerala High Court has held that a vague or general statement in the FIR that the accused showered obscene words is not enough to constitute the offence under Section 294(b) of I.P.C. It is necessary to state the words uttered by the accused. The prosecution would not be justified in bringing in the evidence for the first time the words allegedly spoken to by the accused. When the same is not recorded in the first information report. In the present case on hand, in the FIR, there is absolutely nothing mentioned about the words uttered by the petitioner herein. Whereas, in the charge, the words used by the petitioner has been stated and hence, it is nothing but afterthought. Further, the entire allegations are bald and vague and as such, it cannot be sustained as against the petitioner.



10. In view of the above discussion, this criminal original petition is allowed. The entire criminal proceedings in C.C.No.512 of 2014 on the file of the Additional Mahila Court, Madurai is quashed as against the petitioner. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar(CS-I)

To

1. The Additional Mahila Court, Madurai.

2. The Inspector of Police,
Oomachikulam Police Station,
Madurai District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

**Crl.O.P. (MD) .No.3918 of 2014
and
M.P. (MD) Nos.1 and 2 of 2014
01.10.2018**

arul

TR/SV/SAR-I (19.11.2018) 5P 4C