



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.12.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE **A.D. JAGADISH CHANDIRA**

CrI.O.P.(MD).No.20123 of 2018
and

CrI.M.P.(MD).Nos.9299 and 9300 of 2018

1.Mohan
2.Dhayanidhi ... Petitioners/Accused 2 and 3
Vs.

1.The State rep. by
The Inspector of Police
Kumbakonam,
Thanjavur District.
(Crime No.160 of 2016) ...1st Respondent/Complainant

2.G.Sivaraman ... 2nd Respondents/Defacto Complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.232 of 2018, on the file of the learned Judicial Magistrate No.II, Kumbakonam, Thanjavur District, and quash the charge sheet as against the Petitioners herein.

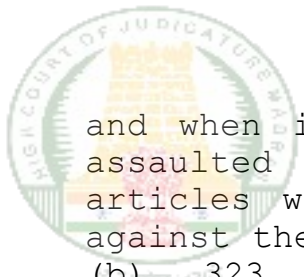
For Petitioners : Mr.A.Thiruvadikumar

For R-1 : Mr.R.Anandharaj
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.232 of 2018, on the file of the learned Judicial Magistrate No.II, Kumbakonam, Thanjavur District, wherein the first respondent has laid charge sheet against the petitioners and yet another person for the offences under Sections 294(b), 323, 332 and 427 IPC.

2.The specific set of charges in the charge sheet against the petitioners who are arrayed as A2 and A3, is only for the offences under Section 294(b) IPC. The facts of the case as per the charge sheet are that on 03.10.2016 at about 23.45 hours, when the de-facto complainant Sivaraman, who was working as Station Manager, had parked his two wheeler near SRMU Office, the accused along with one Selvam had abused him in filthy language using unparliamentary words



and when it was questioned by him, the first accused Selvam had assaulted him causing injuries and also caused damage to his articles worth about Rs.200/- and thereby charge sheet was filed against the first accused Selvam for the offences under Sections 294 (b), 323, 332 and 427 IPC and the specific charge against the petitioners who are arrayed as accused Nos.3 and 4, are only for the offences under Section 294(b) IPC.

3.The learned counsel for the petitioners would challenge the final report against the petitioners who are arrayed as A2 and A3 on two grounds. He would submit that a perusal of the statement of the witnesses recorded under Section 161(3) Cr.P.C would go to show that there is no mention about the obscene or vulgar words stated to have been uttered by the petitioners and he would submit that to bring the offence under Section 294(b) IPC, it should attract three essential ingredients that are (i) the acts must have been done in any public place (ii) the said act must be obscene and (iii) the same must cause annoyance to the others. He would further submit that the object and scope of the said provision is intended to prevent obscene act being performed in public place causing annoyance to the public at large and to prevent annoyance to the others and when there is no materials to show that the prosecution has taken effort to substantiate the charges, the charges against the petitioner cannot be sustained in law. He would further submit that the offences charged namely, Section 294(b) IPC prescribes imposing punishment of three months or with fine or with both and that the case having been registered on 04.10.2016, the cognizance taken by the learned Judicial Magistrate, after the expiry of two years is impermissible, in view of the bar to take cognizance as per the Section 468(2) (b) of Cr.P.C.,

4.Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor appearing for the first respondent.

5.The learned Additional Public Prosecutor appearing for the State would submit that the petitioners along with the other accused are charged together in common for the offences under Sections 294 (b), 323, 332 and 427 IPC along with other accused and thereby Section 468(2) (b) Cr.P.C., will not be applicable in respect of the petitioners, however, he would submit that the charge against the petitioner is only for the offences under Sections 294(b) IPC.

6.Though the private notice has been served on the second respondent, there is no appearance for the second respondent.

7.The learned counsel for the petitioner would rely on the following Judgments:-

"(i) **1996 SCC (Cr1) 583** [Pawan Kumar vs. State of Haryana and another]

<https://hcservices.ecourts.gov.in/hcscservices/>

(ii) **2004 Cr1.L.J. 3393** [Narendra H.Khurana vs. Commissioner of Police]



(iii) **1996(1) CTC 470** [K.Jayaramanuju vs. Janakaraj and another]"

8.I have gone through the materials produced available on record. There is absolutely no mentioning of the obscene words and there is no materials to show the same had caused annoyance to others. When that being so, the further proceedings against the petitioners/A2 and A3 is nothing but an abuse of process of law.

9.In view of the above, continuance of further proceedings against the petitioners who are arrayed as A2 and A3 is an abuse of process of law, thereby the quash petition is allowed and the proceedings in C.C.No.232 of 2018, on the file of the learned Judicial Magistrate No.II, Kumbakonam, Thanjavur District, in respect of the petitioners/A2 and A3 is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Judicial Magistrate No.II,
Kumbakonam.

2.The Inspector of Police
Kumbakonam,
Thanjavur District.

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

+1cc to Mr.A.THIRUVADIKUMAR, Advocate, SR.No.100432

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and

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