



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.OP(MD)No.23128 of 2013

and

M.P.(MD).Nos.1 and 2 of 2013

R.Lochanan

... Petitioner /Accused

Vs.

1. The Inspector of Police,
South Thamaraikulam Police Station,
Kanyakumari District. ...Respondent/Complainant

2. Mr.Bala Janathipathi ...Respondent/Defacto Complainant

Petition filed under Section 482 of Cr.P.C., to call for the records pertaining to the charge sheet in C.C.No.143 of 2013 dated 10.09.2013 pending before the Judicial Magistrate No.III, Nagercoil in Cr.No.331 of 2012, dated 09.11.2012, on the file of the respondent No.1 for the alleged offences under Sections 294(b) and 506(i) of I.P.C and quash the same as illegal.

For Petitioner : Mr.S.Louis

For 1st Respondent : Mr.A.Robinson
Government Advocate (Crl.Side)

For 2nd respondent : Mr.P.T.Ramesh Raja

O R D E R

The petitioner is a retired Headmaster. The second respondent herein is a practicing Lawyer. It appears that there is some dispute between the petitioner and the second respondent with regard to the administration of Srimath Narayanaswamy Temple at Swami Thoppu. The allegation of the second respondent is that the petitioner abused him over mobile phone by using filthy language and also criminally intimidated him. In this regard, F.I.R was registered in Cr.No.331 of 2012 on the file of the South Thamaraikulam Police Station. Investigation was done and final report was filed against the petitioner and the same was taken on file by the learned Judicial Magistrate No.III, Nagercoil for offences under Sections 294(b) and 506(i) I.P.C. To quash the same, the present Criminal Original Petition has been filed.

2.Heard the learned counsel appearing on either side.



3.Mr.P.T.Ramesh Raja, learned counsel appearing for the defacto complainant submitted that he needs time to verify if the call data details have been obtained by the Police.

4.This Court went through the statements recorded under Section 161 of Code of Criminal Procedure. Even according to the second respondent, the petitioner abused him over mobile phone. Section 294(b) I.P.C can be invoked only if obscene words are uttered in or near any public place. In this case, the conversation was on a one to one basis i.e between the petitioner and the defacto complainant over phone. Hence, the essential ingredients of Section 294(b) I.P.C are wholly absent in this case. The other charge against the petitioner is under Section 506(i) I.P.C. The said provision can be invoked only if the victim felt threatened and criminally intimidated. In this case, the petitioner is a retired Headmaster. On the other hand, the defacto complainant is a practicing lawyer. Both are senior citizens.

5.The learned counsel for the petitioner confirms before this Court that at no point of time, he ever abused the defacto complainant. His submission is placed on record.

6.It is true that the defacto complainant in his 161 Cr.P.C statement stated that since he became afraid for his life, he lodged a complaint with the first respondent Police Station. This Court finds it very difficult to believe this averment. It is inherently improbable. In any event since the nature of the occurrence is so trivial and petty that it is surprising that the second respondent thought of even lodging a complaint. It is a fit case in which Section 95 I.P.C deserves to be invoked. Section 95 I.P.C reads as under:

"95:Act causing slight harm:- Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm if that harm is so slight that no person of ordinary sense and temper would complain of such harm."

7.In this view of the matter, the impugned proceedings in C.C.No.143 of 2013 dated 10.09.2013 pending before the Judicial Magistrate No.III, Nagercoil stand quashed. This Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AS)

/True Copy/



To

1. The Judicial Magistrate No.III, Nagercoil

2. The Inspector of Police,
South Thamaraikulam Police Station,
Kanyakumari District.

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

+1cc to Mr.S.Louis, Advocate Sr.No.70533

VS

VB/SB/SAR1/06.07.2018/3P/5C

CrI.O.P. (MD) .No.23128 of 2013
28.06.2018