



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P. (MD) .No.3775 of 2017

and

Crl.M.P. (MD) No.2768 of 2017

1) John Berlamam

2) Vijayan

... Petitioners/Accused No.1 & 2

Vs.

1) The State of Tamil Nadu,

Rep.by the Inspector of Police,

Karungal Police Station,

Karungal, Kanyakumari District. ... 1st Respondent/Complainant

2) Moseskumar

... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records relating to the First Information Report in Crime No.06 of 2017, dated 03.01.2017, on the file of the first respondent Police and quash the First Information Report in Crime No.06 of 2017, dated 03.01.2017, where the petitioners herein have been cited as Accused Nos.1 and 2 on the file of the first respondent Police.

For Petitioners : Mr.E.V.N.Siva

For R-1

: Mr.M.Chandrasekaran

Additional Public Prosecutor

For R-2

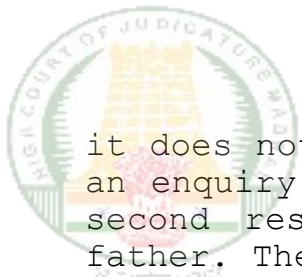
: Mr.B.Brijesh Kishore

O R D E R

This petition has been filed challenging the F.I.R. pending investigation in Crime No.6 of 2017, on the file of the first respondent police.

2. The second respondent has given a complaint to the respondent police to the effect that there was a Whatsapp message that was sent in the group by A1 to the effect that, one of the members of the Diocese belonging to the CSI Church, was holding the hand of a lady and was going near Kuzhithurai Vavuvali Thidal. It was further mentioned in the message that, if a DC member does this,

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



it does not show the way for the youngsters. In the group there was an enquiry as to who has done this and the reply was 'DC RMK'. The second respondent has stated that this refers to him and his father. The respondent police on receipt of the complaint registered an F.I.R. for offense under Sections 67 and 67A of the Information Technology Act, 2000 and 292 A of the Indian Penal Code, 1860.

3. The learned counsel for the petitioners submitted that even if the allegation as made in the complaint is taken as it is, no offense has been made out under Sections 67 and 67A of the Information Technology Act, 2000 and 292 A of the Indian Penal Code, 1860. Learned counsel submitted that the said provisions deal with transmitting obscene materials in an electronic form or materials which are sexually explicit in an electronic form. Learned counsel further submitted that even to attract the provisions under Section 292 A of IPC, the materials must be grossly indecent or scurrilous or intended for blackmail. According to the learned counsel for the petitioner, none of the ingredients are satisfied and the entire complaint is an abuse of law.

4. The learned counsel appearing on behalf of the second respondent submitted that the accused person has intentionally spread this message in a Whatsapp group and thereby, has caused annoyance to the second respondent and his father. It was therefore contended that the reference to 'DC RMK' was clearly pointed out at the second respondent and his father. Therefore, the learned counsel submitted that the respondent police shall complete the investigation and the F.I.R. should not be interfered with, at this stage.

5. The learned Additional Public Prosecutor submitted that the investigation has been completed and final report is ready to be filed before the Concerned court.

6. This Court has carefully considered the submission made on either side and the materials available on record.

7. The Whatsapp message that was exchanged in the group is to the effect that one of the DC member is holding the hands of a lady and walking near a place at about 7:15 p.m. and it does not set a good precedent to the youngsters. When somebody in the group asked as to who is the DC member is, the answer given was 'DC RMK'. According to the second respondent, this clearly refers to the second respondent and his father.

8. Even after the entire allegations that are made in the complaint is taken to be true, this Court is of the considered view that it does not make out an offense under Sections 66 & 67A of the Information Technology Act and Section on 292A of the I.P.C. The support of all these provisions is that there should be an obscene



material, which is sexually explicit spread in an electronic form. Not every message can be brought into the purview of these provisions.

9. At the best, the message that has been circulated in the Whatsapp group could have caused annoyance to the second respondent and may have brought down his image in the Society or within the members of the group and family members. That does not in any way attract the criminal provisions of Sections 66 & 67A of the Information Technology Act and Section on 292 A of the I.P.C. The registration of F.I.R. by the respondent police, in the considered view of this Court, is an abuse process of law and the same requires interference of this Court. It is always left open to the second respondent to work out his remedy, if he feels that the message has defamed him and brought him down in the eye of the society and family members.

9. In the result, this is Criminal Original Petition is allowed and the First Information Report in Crime No.6 of 2017, dated 03.01.2017, on the file of the first respondent Police is hereby quashed. Consequently, connected Crl.M.P.(MD) No.2768 of 2017 is closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Inspector of Police,
Karungal Police Station,
Karungal, Kanyakumari District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC TO MR.E.V.N.SIVA, Advocate Sr. No. 89946

Order made in

Crl.O.P. (MD) .No.3775 of 2017

scr(CO)

TR(04.11.2019) 3P 4C