



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 06.07.2021

Delivered on: 27.07.2021

CORAM

WEB COPY

THE HONOURABLE **MR.JUSTICE G.ILANGOVAN**CrI.O.P. (MD)No.315 of 2019
and CrI.M.P. (MD)Nos.137 & 138 of 2019

Ajikrishnan

... Petitioner/Sole Accused

Vs.

1.The State through
The Inspector of Police,
Oomachikulam Police Station, Madurai District.
Crime No.182 of 2013

2.T.Soosai Rathinam ... Respondents/Defacto Complainant

Prayer : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in C.C.No.130 of 2013 on the file of the learned Additional Mahila Court, Madurai and to quash the same as devoid of merits.

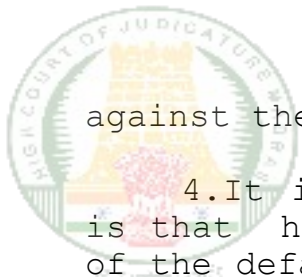
For Petitioner : Mr.A.Haja Mohideen
For R1 : Mr.R.M.Anbunithi,
Additional Public Prosecutor

ORDER

This criminal original petition has been filed to quash the proceedings in C.C.No.130 of 2013 on the file of the learned Additional Mahila Court, Madurai.

2.The case of the prosecution is that one Antony Elvin was married to one Offe Janiya daughter of Elvis. Antony Elvin is the son of the defacto complainant herein. The petitioner is the third party to the marriage. He knows fully that Offe Janiya is the wife of the said Antony Elvin, but had illegal affair with her and abused the wife of the defacto complainant through phone on 19.01.2013 and criminally intimidated her.

3.On the basis of the complaint given by the second respondent, a case in crime No.182 of 2013 under Sections 294(b), 506(i) IPC was registered and during the course of investigation, the offence was altered and final report also filed for the offence under Sections 294(b), 506(i) and 497 IPC, which was taken on file in C.C.130 of 2013 by the Additional Mahila Court, Madurai. Pending trial, this petition came to be filed mainly on the ground that none of the allegations mentioned in FIR attract the ingredients of offence



against the petitioners.

4.It is seen that the main allegation against this petitioner is that he was maintaining illegal affair with the daughter-in-law of the defacto complainant. The main allegation under Section 497 IPC is not made out and hence, the final report even though it has been filed, it has to be struck down as per the judgment in a case of **Joseph Shine Vs. Union of India**. Hence, the offence under Section 497 IPC cannot be tried now and it is out of this Statute also. Next allegation is that he abused the wife of the defacto complainant in filthy language and criminally intimidated her through phone. For the offence under Section 506(2) IPC, it has been repeatedly held by this Court that mere verbal outburst or utterances are not sufficient enough to attract the ingredients of offence under Section 506 IPC. It is relevant to extract Section 503 IPC, which is hereunder:-

503. Criminal intimidation – *Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.*

5.So when look at the averment made in the final report, it is seen that it is only a bald allegation is made. A mere verbal utterances or outburst will not attract the offence under Section 506(1) IPC. From the statements of the witnesses and from the final report, it is seen that the daughter-in-law of the defacto complainant was having love affair with the petitioner even during their college times. After their college education, they also lived as a husband and wife in Tirunelveli. Later, she separated from her husband and started living separately. Hence, the son of the defacto complainant filed IDOP.No.17 of 2013 before the Family Court, Madurai against Offe Janiya seeking divorce, which was also granted on 08.07.2013. So this occurrence said to have taken place before filing of the above said divorce petition. Now both the husband and wife are separated through Court decree.

6.So similarly, the offence under Section 294(b) IPC, the ingredients is that offence must be committed in public place in front of public. Section 294(b) IPC reads as follows:-

294. Obscene acts and songs – *Whoever, to the annoyance of others—*

- (a) *does any obscene act in any public place, or*
- (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.

7. So reading of the allegation made in FIR shows that they are not sufficient enough to attract Section 294(b) IPC since first marriage got separated through Court decree and nothing is going to be served and become fruitful, if the case is proceeded. So the final report pending on the file of the Additional Mahila Court, Madurai in C.C.No.130 of 2013 is liable to be quashed and accordingly, quashed and this criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AE)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

gns

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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.

+1 CC to M/s.A.HAJA MOHIDEEN, Advocate (SR-24110[F] dated 28/07/2021)

CrI.O.P. (MD) No.315 of 2019
27.07.2021

ES (CO)

KB (05.08.2021) 3P 5C