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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.NO.13023 OF 2020
AND CRL.MP.NO.5092 OF 2020

T.Neelakumar

... Petitioner

Vs.

1. The State rep. by the
The Inspector of Police,
Manali New Town Police Station,
Crime No.287 of 2018

2. Johnson

... Respondents

PRAYER:

Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to the impugned criminal case in CC.No.9 of 2020 on the file of the learned Judicial Magistrate No.II, Ponneri and to quash the same by allowing this criminal original petition.

For Petitioner : Mr.N.Manoharan

For Respondents

For R1 : Mr.A.Gopinath,
Government Advocate(crl.side)

For R2 : No appearance

ORDER

This Criminal Original Petition has been filed to quash the CC.No.9 of 2020 on the file of the learned Judicial Magistrate No.II, Ponneri thereby taken cognizance for the offences under Sections 294(b), 506(1) of IPC and Section 66E of Information Technology Act, 2000 registered in crime No.287 of 2018 on the file of the first respondent police as against the petitioner.



2. The case of the prosecution is that the second respondent/ complainant is an Ex-serviceman and he is living with his family at Manali Pudur Nagar, Chennai. He claims that he is an employee of A/M.Ayya Vaigunda Dharmapathi. According to him, he received unpleasant filthy messages from cell No.8610252542 to his cell No.99946478274 for two days.

3. Heard, Mr.N.Manoharan, the learned counsel appearing for the petitioner and Mr.A.Gopinath, Government Advocate (crl.side) appearing for the first respondent police. Though notice was served to the second respondent, today no one appeared on behalf of the second respondent before this Court in person or through pleader.

4. As per the case of the prosecution, the petitioner got angry over the conduct of the second respondent and allegedly expressed his displeasure through messages sent to him. It is further alleged that the second respondent was also intimidated by the petitioner through phone.

5. On perusal of the FIR, the entire allegations are vague and bald. Even assuming that the allegations are to attract offence under Section 506(i) of IPC, the intention must be to cause alarm to the victim and materials have to be brought on record to show that the intention was to cause alarm to the person. Hence, mere a threat is not sufficient to attract the charge of criminal intimidation. In this regard it is relevant to rely upon the judgment in the case of Manik Taneja and anr. Vs. State of Karnataka reported in 2015 (7) SCC 433, wherein it is held as follows:

14. A reading of the definition of "Criminal intimidation" would indicate that there must be an act of threatening to another person, of causing an injury to the person, reputation, or property of the person threatened, or to the person in whom the threatened person is interested and the threat must be with the intent to cause alarm to the person threatened or it must be to do any act which he is not legally bound to do or omit to do an act which he is legally entitled to do.

15. In the instant case, the allegation is that the appellants have abused the complainant and obstructed the second respondent from discharging his public duties and spoiled the integrity of the second respondent. It is the intention of the accused that has to be considered in deciding as to whether what he has stated comes within the meaning of "Criminal intimidation". The threat must be with



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intention to cause alarm to the complainant to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of this section. But material has to be placed on record to show that the intention is to cause alarm to the complainant. From the facts and circumstances of the case, it appears that there was no intention on the part of the appellants to cause alarm in the minds of the second respondent causing obstruction in discharge of his duty. As far as the comments posted on the Facebook are concerned, it appears that it is a public forum meant for helping the public and the act of appellants posting a comment on the Facebook may not attract ingredients of criminal intimidation in Section 503 IPC.

Therefore, offence under Section 506(i) of IPC is not at all attracted as against the petitioner.

6. Insofar as the offence under Section 294(b) of IPC, mere utterance of obscene words are not sufficient, but there must be a further proof to establish that it was to the annoyance of others, which is lacking in this case. Further, there is absolutely no words uttered by the petitioner as such to constitute the offence under Section 294(b) of IPC, there is no averments and allegations. Further the charges do not show that on hearing the obscene words, which were allegedly uttered by the petitioner, the person felt annoyed. He has not spoken about the obscene words, he felt annoyed and in the absence of legal evidence to show that the words uttered by the petitioner annoyed the person, it cannot be said that the ingredients of the offence under Section 294(b) of IPC is made out. It is relevant to rely upon the judgment reported in 1996(1) CTC 470 in the case of K.Jeyaramanuju Vs. Janakaraj & anr., wherein it is held as follows :-

"To prove the offence under Section 294 of IPC mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case."

The above judgment is squarely applicable to the present case and therefore, the offence under Section 294(b) of IPC is not at all attracted as against the petitioner. That apart, in the case on hand, even according to the case of the prosecution,



threatening was made over phone. Therefore, the offence under Section 294(b) of IPC would not attract as against the petitioner.

7. Insofar as the offence under Section 66E of Information Technology Act is concerned, it has no application to the present case, since mere sending of a message would not attract Section 66E of Information Technology Act, 2000.

8. In view of the above, no charges are made out as against the petitioner and the entire proceedings is nothing but clear abuse of process of law. As such, the above proceedings against the petitioner is liable to be quashed. Accordingly, the entire proceedings in CC.No.9 of 2020 on the file of the learned Judicial Magistrate No.II, Ponneri, thereby taken cognizance for the offences under Sections 294(b), 506(1) of IPC and Section 66E of Information Technology Act, 2000 registered in crime No.287 of 2018 on the file of the first respondent police as against the petitioner is quashed and this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

1 The Judicial Magistrate No.II,
Ponneri.

2 The Inspector of Police,
Manali New Town Police Station.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.N.Manoharan, Advocate, S.R.No.34329

CRL.O.P.No.13023 of 2020
and CrI.MP.No.5092 of 2020

PMK (CO)
PM/28/06/2022