



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P (MD)No.512 of 2022

and

Cr.M.P (MD)Nos.395 & 396 of 2022

WEB COPY

Dharmarajan

... Petitioner/Sole Accused

v.

1. The State represented by
The Inspector of Police,
Subramaniapuram Police Station,
Madurai City, Madurai.
(Crime No.1342 of 2020)

... 1st Respondent/Complainant

2. Anbudeivamani

... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the entire records relating to the proceedings in C.C.No.863 of 2021 on the file of the learned Judicial Magistrate No.IV, Madurai and quash the same insofar as the petitioner is concerned.

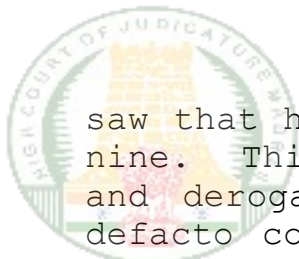
For Petitioner : Mr.T.Antony Arulraj

For Respondents : Mr.B.Thanga Aravindh
Government Advocate (Crl.Side) for R.1

ORDER

Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Criminal Side) appearing for the first respondent. Even though the defacto complainant has been served, he has not chosen to enter appearance.

2. The petitioner is facing trial in C.C No.863 of 2021 on the file of Judicial Magistrate No.4, Madurai for the offences under Sections 427, 294(b), 323 and 506(1) of IPC. The case of the prosecution is that the defacto complainant and the petitioner are residing as tenants in an apartment complex. The relationship between the two families is under strain. On 05.07.2020 at about 08.30 a.m. when the defacto complainant went to the terrace, he



saw that his mother's name has been written along with the number nine. This number translated in Tamil language is an insensitive and derogatory manner of referring to the transgenders. The defacto complainant photographed the same. He suspected that it must have been the handiwork of the petitioner's son. He went to the apartment of the petitioner to confront him. Quarrel broke out. The defacto complainant's mobile phone fell and got damaged. He also suffered some minor scratches for which he took treatment in a private hospital as an outpatient. Crime No.1342 of 2020 was registered on the file of the first respondent. After investigation, final report was filed and cognizance of the aforesaid offences was taken. To quash the prosecution, this criminal original petition has been filed.

3. I must castigate and condemn the first respondent for having arrayed the petitioner's son as the second accused in the FIR. It is beyond dispute that the petitioner's son is a special child. The pass book issued by the District Welfare Officer for the Differently Abled, Madurai certifies the petitioner's son as suffering from mental retardation. That is why, while filing the final report, the first respondent had deleted his name and confined the prosecution to the petitioner alone. The petitioner's counsel pointed out with anguish that the petitioner's daughter is also a special child and the entire family was taken to the police station on the occurrence date and detained for quite some time. A mere look and a few minutes of observation would have been sufficient to find out that the petitioner's son is a special child. I fail to understand as to how the first respondent had the heart to still implicate him as an accused.

4. India is a signatory to the U.N Convention on the Rights of Persons with Disabilities. To give effect to the convention, the Indian Parliament enacted the Rights of Persons With Disabilities Act, 2016. Section 2(s) of the Act defines a "person with disability" as one with long term physical, mental, intellectual or sensory impairment which, in interaction with barriers, hinders his full and effective participation in society equally with others. The schedule to the Act sets out certain specified disabilities. There are various kinds of disabilities such as physical, intellectual, mental and neurological. "Autism spectrum disorder" means a neuro-developmental condition typically appearing in the first three years of life that significantly affects a person's ability to communicate, understand relationships and relate to others, and is frequently associated with unusual or stereotypical rituals or behaviors. "Mental illness" means a substantial disorder of thinking, mood, perception, orientation or memory that grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life but does not include retardation. It



is not known under which category the petitioner's son would fall. But the fact remains that he is a person with special needs.

5. Section 5 of the Act states that the persons with disabilities shall have the right to live in the community. Section 2(y) talks of "reasonable accommodation" as meaning necessary and appropriate modification and adjustments, without imposing a disproportionate or undue burden to a particular case, to ensure to persons with disabilities the enjoyment or exercise of rights equally with others. The Hon'ble Supreme Court of India in **Vikash Kumar v. UPSC (2021) 5 SCC 370** observed that the principle of reasonable accommodation captures the positive obligation of the State and private parties to provide additional support to persons with disabilities to facilitate their full and effective participation in the society. Reasonable accommodation is the instrumentality-are an obligation as a society-to enable the disabled to enjoy the constitutional guarantee of equality and non-discrimination. In this case, the defacto complainant who knew about the condition of the petitioner's children could have shown reasonable accommodation. He did not. The first respondent fared worse. He not only brought the special children to the police station but also included the petitioner's son in the first information report. I find it inexcusable. I would expect the Commissioner of Police, Madurai City to take note of the happenings in this case and sensitize the police officers working under him to be considerate when they come in contact with such special children.

6. Even a cursory reading of the prosecution case would show that it was the defacto complainant who invited the whole trouble. He needlessly assumed that the offending writing was by the petitioner's son. The petitioner's counsel vehemently questioned the said assumption. Even assuming it to be true, the defacto complainant ought to have ignored the same in view of the mental condition of the petitioner's son. The principle of reasonable accommodation expects such a response. The defacto complainant's mother in her statement under Section 161 Cr.P.C stated that it was her son who raised his hand first. Such an aggressive gesture naturally led to reaction. There was a minor scuffle. The petitioner did not intend to damage the defacto complainant's iphone. It was the defacto complainant who had taken the iphone to show it to the petitioner. During the scuffle, the iphone fell accidentally and suffered some damage. Section 427 of IPC will be attracted only if the accused had an intention to cause mischief. That is clearly not the case here. Since the defacto complainant picked up quarrel and that too by going to the house of the petitioner and since the occurrence was of a trivial nature, I deem it fit and appropriate to invoke Section 95 of IPC and quash the impugned proceedings. This Criminal Original



Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-I)

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// True Copy //

/ /2022

Sub Assistant Registrar (CS)

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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 Judicial Magistrate No.IV, Madurai.
2. The Inspector of Police,
Subramaniapuram Police Station,
Madurai City, Madurai.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.ANTONY ARUL RAJ, Advocate (SR-3902[F] dated 03/02/2022)

Crl.O.P (MD)No.512 of 2022

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USK/05.04.2022/4P/5C