

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.01.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.19734 of 2021
and
CRL.M.P.(MD)No.11086 of 2021

Navalpattu Viji @ Vijayakumar

... Petitioner / Sole Accused

Vs.

1. The State rep.

By the Inspector of Police,
Navalpattu police station,
Trichy District.

(Crime No.51 of 2021) ... 1st Respondent / Complainant

2. Mariyappan

... 2nd Respondent /
Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records in connection with the impugned complaint in Crime No.51 of 2021 dated 02.02.2021 pending on the file of the respondent police and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.S.Sarvagan Prabhu

For R-1 : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor.

For R-2 : Mr.M.Pitchai Muthu

* * *

ORDER

Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the first respondent and the learned counsel appearing for the defacto complainant.

2.The petitioner is figuring as an accused in Crime No.51 of 2021 registered on the file of Navalpattu police station. The case of the defacto complainant is that the petitioner had posted a voice message in his Facebook page containing filthy and defamatory statements against the Hon'ble Education Minister, namely, Thiru.Anbil Mahesh Poyyamozhi. The Facebook post was made on 02.02.2021. Thereupon, the impugned First Information Report came to be registered. To quash the same, this criminal original petition has been filed.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the memorandum of grounds and called upon this Court to quash the impugned First Information Report.

4.Per contra, the learned Additional Public Prosecutor as well as the learned counsel appearing for the defacto complainant submitted that no case for quashing has been made out. According to them, a reading of the offending transcript would clearly indicate that the offences in question are clearly attracted.

5.I carefully considered the rival contentions and went through the materials on record.

6.A reading of the impugned First Information Report indicates that the petitioner is having a serious grouse against the present Hon'ble Education Minister and that is why, he has posted the offending voice message. If at all, it is only the person who has been affected has to lodge the impugned complaint. He has not done so. On the other hand, the defacto complainant has come forward with the impugned complaint. It is also stated that on the very same day another First Information Report was registered against the petitioner herein on the file of the City Crime Branch, Trichy. I sustain the contention of the learned counsel appearing for the

petitioner that the second respondent had no *locus standi* whatsoever to lodge the impugned complaint. It is true that the process of criminal law can be set in motion by any person. It is not necessary that he should be an aggrieved individual. But offences such as defamation can be prosecuted only by the affected individual. That is why, such cases can be dealt with only by filing private complaint. The case on hand is an FIR. Yet, a reading of the complaint would indicate that the act complained of is directed against an individual.

7. That apart, the offences in question are also not attracted. Section 294(b) of I.P.C. will be attracted only if abusive words are uttered in or near a public place. I went through the contents of the transcript. It is seen that the petitioner had condemned the present Hon'ble Education Minister. However, no abusive or filthy words were employed by the petitioner. Therefore, Section 294(b) of I.P.C. is not made out.

8. Likewise, Section 506(1) of I.P.C. is also not attracted. It has been held by the Madras High Court in **(1988) L.W.**

(Crl.) 178 (Noble Mohandass V. State) that the offence will be made out only if the threat is real and the effect is felt. Only if the affected person feels the effect of intimidation, then and then alone, the offence is made out. It is not the case of the prosecution that the Hon'ble Education Minister Thiru.Anbil Mahesh Poyyamozhi felt intimidated by the Facebook post. Therefore, Section 506(1) of I.P.C. is also not attracted.

9.Section 67 of the Information Technology Act, 2000 is as follows:-

“67.Punishment for publishing or transmitting obscene material in electronic form.-
Whoever publishes or transmits or causes to be published or transmitted in the electronic form, any material which is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to three years and with fine which may extend to five lakh rupees and in the event of a second or subsequent conviction with

imprisonment of either description for a term which may extend to five years and also with fine which may extend to two lakh rupees. ”

10.A careful reading of the aforesaid provision would indicate that what was in the mind of the law maker was only to prevent the publishing or transmitting of pornographic material. The above provision was considered by the Hon'ble Supreme Court in *Aveek Sarkar v. State of W.B* (2014) 4 SCC 257. In the said decision, it has been held as follows:-

“TEST OF OBSCENITY AND COMMUNITY STANDARDS 13. Constitution Bench of this Court in the year 1965 in *Ranjit D. Udeshi* (supra) indicated that the concept of obscenity would change with the passage of time and what might have been “obscene” at one point of time would not be considered as obscene at a later period. The Judgment refers to several examples of changing notion of obscenity and ultimately the Court observed as follows :-(AIR p.888, para 18).

“18. ... The world, is now able to tolerate much more than formerly, having become indurated by literature of different sorts. The attitude is not yet settled. ...” This is what this Court has said in the year 1965.

14. Again in the year 1969, in Chandrakant Kalyandas Kakodkar (supra), this Court reiterated the principle as follows:-(SCC p.694, para 12)

“12. ... The standards of contemporary society in India are also fast changing.” The abovementioned principle has been reiterated in Samresh Bose v. Amal Mitra by laying emphasis on contemporary social values and general attitude of ordinary reader. Again in 2010, the principle of contemporary community standards and social values have been reiterated in S. Khushboo V. Kanniammal.

COMMUNITY STANDARD TEST:

23. We are also of the view that Hicklin test is not the correct test to be applied to determine what is obscenity. Section 292 of the Indian Penal Code, of course, uses the expression “lascivious and prurient interests” or its effect. Later, it has also been indicated in the said Section of the applicability of the effect and the necessity of taking the items as a whole and on that foundation where such items would tend to deprave and corrupt persons who are likely, having regard to all the relevant

circumstances, to read, see or hear the matter contained or embodied in it. We have, therefore, to apply the “community standard test” rather than “Hicklin test” to determine what is “obscenity”. A bare reading of Sub-section (1) of Section 292 , makes clear that a picture or article shall be deemed to be obscene

(i) if it is lascivious;

(ii) it appeals to the prurient interest; and

(iii)it tends to deprave and corrupt persons who are likely to read, see or hear the matter, alleged to be obscene. Once the matter is found to be obscene, the question may arise as to whether the impugned matter falls within any of the exceptions contained in Section. A picture of a nude/ semi-nude woman, as such, cannot per se be called obscene unless it has the tendency to arouse feeling of or revealing an overt sexual desire. The picture should be suggestive of deprave mind and designed to excite sexual passion in persons who are likely to see it, which will depend on the particular posture and the background in which the nude/semi-nude woman is depicted. Only those sex-related materials which have a tendency of “exciting lustful thoughts” can be held to be obscene, but the obscenity has to be judged from the point of view of an average person, by

applying contemporary community standards.”

11.The offending transcript will not create a lascivious feeling in a mind of any person who reads it. The voice message will not have any such effect. None of the essential ingredients of Section 67 of the I.T Act are present in this case.

12.Looked at from any angle, continuance of the impugned prosecution is not warranted. The impugned First Information Report is quashed. This criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

20.01.2022

Index : Yes / No
Internet : Yes/ No
PMU/skm

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 Inspector of Police, Navalpattu police station,
Trichy District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

G.R.SWAMINATHAN, J.

PMU/skm

Crl.O.P.(MD)No.19734 of 2021

20.01.2022