



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 04.02.2022

PRONOUNCED ON: 25.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)No.20127 of 2021

and

Crl.M.P.(MD).No.11335 of 2021

Ramasamy

... Petitioner / Sole Accused

Vs

1.State represented by
the Inspector of Police,
Ponnamaravathi Police Station,
Pudukottai District.
(Crime No.39/2020)

2.S.Anand

... Respondents

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records pertaining to the impugned F.I.R in Crime No.39 of 2020 dated 17.02.2020 on the file of the first respondent Police and quash the same as illegal.

For Petitioner	: Mr.R.Srinivasan
For R1	: Mr.M.Sakthikumar
	Government Advocate
For R2	: Mr.A.Arul Jenifer

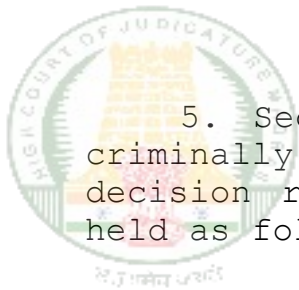
ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.39 of 2020 registered on the file of the Ponnamaravathi Police Station, Pudukkottai for the offences under Sections 294(b), 506(i) of IPC and Section 66 of Information Technology Act, 2000.

2. The learned Government Advocate(crl.side) as well as the learned counsel appearing for the defacto complainant would submit that no case for quashing has been made out.

3. The case of the prosecution is that the petitioner who is based in Malaysia had sent a highly offensive message over whatsapp to the defacto complainant's mobile.

4. The only question is whether sending such text will attract the offences mentioned in the FIR. Section 294(b) of IPC will be attracted only if a person to annoyance of others sings, recites or utters any obscene song, ballad or words, in or near any public place. In this case, the petitioner is said to have sent an obscene text to the defacto complainant over whatsapp. Since the offence was not committed in or near any public place, Section 294(b) is not attracted.



5. Section 506(i) of IPC will be attracted, if a person is criminally intimidated. The Hon'ble Madras High Court, in the decision reported in **1989 Cr1 LJ 669 (Noble Mohandass Vs. State)** held as follows:-

"7. As far as the offence under Section 506(2) is concerned, the learned counsel for the revision petitioner contended that the threat was not a real one, that it was of the kind of words which are currently and frequently used by people when they are angry and that further the threat was not spoken to by P.W.3 and P.W.4 who by that time had already come to the scene of occurrence. It is, in fact, found from the records that the threat would have been lashed out after P.Ws.3 and 4 came to the place and separated both the husband and wife. Therefore, the evidence of P.W.1 should have been corroborated by the evidence of P.W.3 and P.W.4 who were necessary witnesses to the occurrence. Since they did not corroborate the testimony of P.W.1 in this aspect, the offence cannot be held to be proved. Further for being an offence under Section 506(2) which is rather an important offence punishable with imprisonment which may extend to seven years, the threat should be a real one and not just a mere word when the person uttering it does not exactly mean what he says and also when the person at whom threat is launched does not feel threatened actually. In fact P.W.1 when she filed the complaint to the police officer, did not express any fear for her life nor asked for any protection. Therefore, the offence under Section 506(2) is not made out." There must be threat in the real sense. Only if the complainant felt intimidated, Section 506(i) of IPC would be attracted. The defacto complainant is an SSI. Hence, the offence under Section 506 (i) of IPC is also not attracted.

6. Section 66 of the Information Technology Act, 2000 will be attracted, only if the act referred to Section 43 of the said statute is committed. Section 43 of the Information Technology Act, 2000 is as follows:-

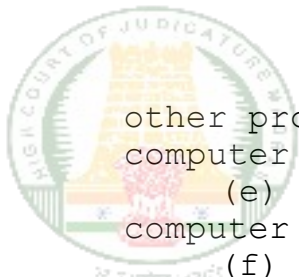
43. Penalty for damage to computer, computer system, etc. If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network, -

(a) accesses or secures access to such computer, computer system or computer network;

(b) downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium;

(c) introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;

(d) damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any



other programmes residing in such computer, computer system or computer network;

(e) disrupts or causes disruption of any computer, computer system or computer network;

(f) denies or causes the denial of access to any person authorised to access any computer, computer system or computer network by any means;

(g) provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made thereunder;

h) charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system, or computer network, he shall be liable to pay damages by way of compensation not exceeding one crore rupees to the person so affected.

The act committed by the petitioner herein will not fall within the scope or purview of Section 43 of the Act. Therefore, Section 66 of the Information Technology Act is also not attracted.

7. Looked at from any angle, ingredients of none of the offences are present in this case. The impugned FIR is quashed. This Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

rmi

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,
Ponnamaravathi Police Station,
Pudukottai District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.R. SRINIVASAN, Advocate (SR-21532[F] dated 27/04/2022)

Crl.O.P(MD)No.20127 of 2021
25.04.2022

SS/25.05.2022 : 3P/4C

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