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Crl.O.P.Nos. 24974 of 2015 & 11805 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.Nos. 24974 of 2015 & 11805 of 2017

and

M.P.No.1 of 2015 and Crl.M.P.No. 7744 of 2017

Crl.O.P.No.26974 of 2015

A.Arunprasath

.... Petitioner

Vs

1. The State
represented by
Inspector of Police,
All Women Police Station,
Cuddalore District.
(Crime No.8 of 2015)

2. Thenmozhi. V

.... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the FIR in Crime No.8 of 2015 on the file of the All Women Police Station, Cuddalore and to quash the same.

Crl.O.P.No.11805 of 2017

A.Arunprasath

.... Petitioner



Crl.O.P.Nos. 24974 of 2015 & 11805 of of 2017

Vs

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1. The State
represented by
Inspector of Police,
Pudhu Nagar Police Station,
Cuddalore District.
(Crime No.229 of 2015)

2. Thenmozhi. V Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records of the STC No.259 of 2016 on the file of the Judicial Magistrate No.II, Cuddalore.

In both Crl.O.Ps

For Petitioner	: Mr.P.Muthukumarasamy
For R1	: Mr.L.Baskaran
	Government Advocate (Crl.Side)
For R2	: Mr.N.Suresh

COMMON ORDER

Crl.O.P.No.26974 of 2015

This petition has been filed to quash the FIR in Crime No.8 of 2015 on the file of the All Women Police Station, Cuddalore.

2. The learned Government Advocate (Crl.Side) appearing for the first respondent submitted that while pending this petition, the first respondent has completed the investigation and filed final report on



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18.08.2023 before the Judicial Magistrate, Additional Mahila Court,
Cuddalore.

3. Therefore, this Criminal Original Petition is dismissed as
infructuous. Consequently, connected miscellaneous petition is closed.

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4. This petition has been filed to quash the proceedings in
STC No.259 of 2016 on the file of the Judicial Magistrate No.II,
Cuddalore.

5. The second respondent lodged a complaint alleging that
she got married with the petitioner on 22.01.2007 and gave birth to a
female child on 22.08.2008. Due to misunderstanding and various
reasons, they got separated. The petitioner filed a petition for divorce in
H.M.O.P.No.114 of 2010 and the same was dismissed by a Judgment and
Decree dated 14.12.2013. The second respondent filed a petition for
restitution of conjugal rights in H.M.O.P.No.110 of 2011 and the same
was allowed. Aggrieved by both the Judgment and Decree, the petitioner



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filed appeals in CMA No.13 & 14 of 2013 and the same were dismissed.

Aggrieved by the same, once again the petitioner filed appeal in CMSA Nos.39 of 2014 & 3 of 2015. CMA No.13 of 2013 is dismissed by this Court and the Review Application is pending. As against the dismissal of the divorce petition, the petitioner filed CMSA.No.39 of 2014.

6. Pending the proceedings, the matter was referred before the Mediation. Before Mediation, the respondent took a stand that if the petitioner seeks apology from his mother, she will join with the petitioner. On 26.04.2015, when the second respondent along with her mother went to the house of the petitioner, the petitioner scolded her in filthy language and also attacked by hands. Hence, the complaint.

7. On receipt of the complaint, the first respondent registered FIR in Crime No.229 of 2015 for the offences under Sections 294(b), 352 and 506(i) of IPC and the same has been taken cognizance in STC No.259 of 2016 on the file of the Judicial Magistrate No.II, Cuddalore.



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8. Admittedly, there are matrimonial disputes pending between the petitioner and the second respondent. Now the appeal in CMSA No.3 of 2015 is pending as against the order of dismissal of divorce petition filed by the petitioner. Though the appeal as against the Judgment and Decree of conjugal rights is pending the petitioner filed review petition and it is pending. That apart, already the second respondent lodged another complaint which was registered in Crime No.8 of 2015 on the file of the Inspector of Police, All Women Police Station, Cuddalore District. Thereafter, after completion of investigation, the respondent Police filed final report on 18.08.2023 before the Judicial Magistrate, Additional Mahila Court, Cuddalore and it is pending for taking cognizance.

9. A perusal of the statement recorded under Section 161 of Cr.P.C reveals that as directed by this Court when the second respondent and her mother went to the house of the petitioner, the petitioner had scolded them in filthy language and also attacked them by hand.



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10. To attract the offence under Section 294(b) of IPC, there must be an uttering of words to affect the person who lodged the complaint. In this regard it is relevant to extract the Section 294(b) of IPC, 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."

11. Admittedly, there is absolutely no words uttered by the petitioners 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 petitioners, the witnesses felt annoyed. No one has spoken about the obscene words, which made them feel annoyed. In the absence of any legal evidence to show that the words uttered by the petitioners annoyed others, it cannot be said that the ingredients of the offence under Section 294(b) of IPC is made out.



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12. It is relevant to rely upon the judgment reported in

1996(1) CTC 470 in the case of **K.Jeyaramanuju Vs. Janakaraj & anr.**,

which 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 petitioners.

13. Insofar as the offence under Section 506(i) of I.P.C is concerned, to attract the offence, threat and intention to cause an alarm are main ingredients. The third ingredient is that the intention must be to cause any 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, subsequent to the main ingredients. Whereas in the case on hand, even according to the case of the prosecution, the alleged threats issued by the petitioner were only empty threats and they had no effect on the complainant.



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14. In this regard, It is relevant to rely upon the judgment of

this Court made in **Crl.O.P.(MD)No.11030 of 2014** in the case of **Abdul**

Agis Vs. State through the Inspector of Police, which reads as follows:-

“7.It is seen from the statements recorded under Section 161(3) of Cr.P.C. of the second respondent/ defacto complainant that it does not contain any obscene words, which were uttered by the petitioner herein and the entire allegations are very simple in nature. It is also seen from the statement of one Uthami, that the petitioner threatened the defacto complainant with dire consequences when he dashed the defacto complainant. The entire allegations are trivial in nature. Further, to attract the offence under Section 506(i) of I.P.C., there was a threatening only by words. As pointed by the learned counsel appearing for the petitioner, the threat should be a real one and not just a mere word when the petition uttering does not exactly mean what he says and also when the person to whom threat is launched does not feel threatened actually. Therefore, the offences under Sections 294(b) and 506(i) of I.P.C. are not made out as against the petitioner herein and also the entire criminal proceedings is clear an abuse of process of Court. Therefore, this Court is inclined to quash the entire proceedings.”



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15. All the allegations are vague in nature and as such, there

is no chance for convicting the petitioner in any manner. That apart, already the petitioner is facing the charge under various provisions in Crime No.8 of 2015 on the file of the Inspector of Police, All Women Police Station, Cuddalore. Therefore, the proceedings is nothing but a clear abuse of process of law and it is liable to be quashed.

16. In view of the above discussions, the proceedings in STC No.259 of 2016 on the file of the Judicial Magistrate No.II, Cuddalore, is hereby quashed. Accordingly, Crl.O.P.No.11805 of 2017 is allowed. Consequently, connected miscellaneous petition is closed.

07.11.2023

Internet: Yes

Index : Yes/No

Speaking/Non Speaking order

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