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Crl OP No. 3615 / 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 3615 of 2021

and

Crl.M.P. No. 2130 of 2021

Oviyar Anandh

... Petitioner

Versus

1. State represented by,
The Inspector of Police,
Kachirapalayam Police Station,
Kallakurichi, Taluk & District.

2. Periyasamy

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records relating in C.C. No. 75 of 2018 on the file of Judicial Magistrate Court No.1, Kallakurichi herein and quash the same as devoid of merits and without prima facie case.

For Petitioner : Mr. R. Sankara Subbu.

For Respondents : Mr. A. Damodaran,
Additional Public Prosecutor for R1.

No appearance for R2.



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ORDER

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The petition is to quash the final report for the alleged offence under Sections 294(b) and 506(ii) of the Indian Penal Code as against the petitioner.

2.It is alleged in the final report that on account of prior enmity, the petitioner/A2 and another accused had attacked the defacto complainant and abused him in filthy language. It is further alleged that the first accused had attacked the defacto complainant with the iron rod. The petitioner is said to have abused the defacto complainant and threatened him with dire consequences.

3.Mr. R. Sankara Subbu, learned counsel for the petitioner submitted that the instant proceedings is nothing but an abuse of process of law. Earlier, the respondent Police had conducted investigation and had closed the proceedings as mistake of fact which is revealed in the letter written by the Sub-Inspector of Police attached to the first respondent Police to the Tahsildar of Chinnasalem. Further, the Tahsildar in turn, had sent another letter to the District Collector, informing about the closure of the instant case. Both the documents have



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been obtained by the petitioner under the Right To Information Act.

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4. Though notice has been served on the second respondent, none has entered appearance on his behalf.

5. The learned Additional Public Prosecutor submitted that there are allegations in the final report and hence, the matter has to be adjudicated only before the trial Court.

6. This Court finds from the records that investigation was completed by the respondent Police and closed as mistake of fact. This is clear from the letter dated 22.12.2017 sent by the Sub-Inspector of Police attached to the respondent Police to the Tahsildar. The Tahsildar had in turn sent a letter to the District Collector stating the above fact. The respondents cannot dispute the credibility of these documents as these documents have been obtained under the Right To Information Act. It is not known as to how a positive final report has been filed relating to the very same incident after closure.

7. Be that as it may. The allegations against the petitioner is that he committed the offences under Sections 294(b) and 506(ii) of the Indian



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Penal Code. There is no allegation in the impugned final report to state that the petitioner had committed the offence under Section 294(b) of the Indian Penal Code. The Hon'ble Supreme Court in the Judgement reported in **2022 LiveLaw (SC) 844 – N.S.Madhanagopal and another Vs. K.Lalitha**, has held as follows:

“It has to be noted that in the instance case, the absence of words which will involve some lascivious elements arousing sexual thoughts or feelings or words cannot attract the offence under Section 294(b). None of the records disclose the alleged words used by the accused. It may not be the requirement of law to reproduce in all cases the entire obscene words if it is lengthy, but in the instant case, there is hardly anything on record. Mere abusive, humiliating or defamative words by itself cannot attract an offence under Section 294(b) IPC. 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. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the appellants accused annoyed others, it can not be said that the ingredients of the offence under Section 294 (b) of IPC is made out.”

The above observations squarely apply to the facts of the instant case.

8.Likewise, the respondent Police has not alleged as to what



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are the alleged words of threat used by the petitioner. This Court has repeatedly held that the words spoken must cause real threat to constitute the offence of criminal intimidation. Useful reference can be made to the judgment of this Court in **Noble Mohandass Vs. State**, reported in **Manu/TN/0026/1988**, wherein this court has held as follows:

“7. ...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 exactly mean what he says and also when the person at whom threat is launched does not feel threatened actually....”

9. For all the above reasons, this Criminal Original Petition is allowed by quashing the proceedings in C.C. No. 75 of 2018 on the file of Judicial Magistrate Court No.1, Kallakurichi in so far as the petitioner alone is concerned. Consequently, the connected miscellaneous petition is closed.

16.06.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order



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Neutral Citation: Yes / No

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SUNDER MOHAN, J

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To

1. The Inspector of Police,
Kachirapalayam Police Station,
Kallakurichi, Taluk & District.
2. The Judicial Magistrate No.I,
Kallakurichi.
3. The Additional Public Prosecutor,
High Court of Madras,
Chennai.

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and
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