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Crl OP No. 6962 / 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 6962 of 2021
and

Crl.M.P. Nos. 4607 & 8962 of 2021

1. P. Kulanthaivel

2. K. Saravanan

3. K. Bhuvaneswari

... Petitioners

Versus

1. The State rep., by,
The Sub-Inspector of Police,
Puduchathiram Police Station,
Namakkal District.
Cr. No. 186 of 2019.

2. Vijaya

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records relating to the C.C. No. 387 of 2020 on the file of the learned Judicial Magistrate II at Namakkal and quash the same as illegal.

For Petitioners : Mr. C. Munuraj.

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

Mr. S. Sheik Ismail for R2.



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ORDER

The petition is to quash the final report filed for the alleged offence under Sections 420, 294(b) and 506(i) of the Indian Penal Code.

2. The allegation in the final report is that A1 and A2 had represented the defacto complainant that they would secure a job and obtained Rs.4,00,000/- and when the defacto complainant made a demand, A1 and A2 had abused the defacto complainant in filthy language and thus they committed the aforesaid offences.

3. The learned counsel for the petitioners would submit that the respondent police had earlier conducted investigation and had recorded that further action is dropped on the letter dated 03.09.2019, sent by the defacto complainant to the Inspector of Police. The learned counsel further submitted that the matter is civil in nature and the respondents are proceeding against the petitioners only to wreak vengeance. Further, the third petitioner is an unmarried lady and the daughter of the first accused. She has nothing to do with the alleged offences and even according to the prosecution, the third accused has not made any false representation.



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The only allegation against the third accused is that she along with the other accused abused the defacto complainant.

4.The learned Additional Public Prosecutor appearing for the first respondent and the learned counsel for the second respondent would submit that the endorsement 'further action dropped' in the letter sent by the defacto complainant dated 03.09.2019 cannot be accepted since if really the respondent police had dropped further action, they would have filed a report before the jurisdictional Magistrate. However there is no such report filed by the respondent police. The document relied upon by the petitioner cannot be accepted at this stage. They would further submit that there are allegations in the impugned final report and the matter has to be adjudicated only before the trial Court.

5.This Court finds that the allegation is that the accused had demanded money from the defacto complainant promising to obtain a job. The materials filed in support of the final report suggest that the demand was allegedly made by A1 and A2. There is nothing in the impugned final report to show that A3 had any role in the alleged deception and demand made by the other two accused. This Court further finds that the allegations against A3 is that she had abused the defacto



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complainant in filthy language. 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.



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6. Further, this Court has repeatedly held that the words spoken must cause real threat to constitute the offence of criminal intimidation. However, on a reading of the Final Report, there is nothing to suggest that there was any real threat so as to attract 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....”

Hence, this Court is inclined to quash the final report as against the third petitioner who is arrayed as A3.

7. Since there are allegations against A1 and A2, this Court is not inclined to entertain this petition as far as A1 and A2 are concerned.



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However, it is open for A1 and A2 to raise all contentions before the trial Court and the trial Court shall consider the same on merits without being influenced by any of the observations made in this order.

8. Accordingly, this Criminal Original Petition is partly allowed and the proceedings in C.C. No. 387 of 2020 on the file of the learned Judicial Magistrate II at Namakkal is quashed as against the third petitioner. Consequently, the connected miscellaneous petitions are closed.

12.06.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Sub-Inspector of Police,
Puduchathiram Police Station,
Namakkal District.
2. The Judicial Magistrate,
Namakkal.
3. The Additional Public Prosecutor,



High Court of Madras,
Chennai.

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SUNDER MOHAN, J

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