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Crl.O.P.No.7447 of 2021



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **05.06.2023**

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.7447 of 2021

and

Crl.M.P.Nos.4934 & 4935 of 2021

- 1.Prabhakaran
- 2.Surendhar
- 3.Edward Thomas Daniel
- 4.Dhamodharan

... Petitioners

Vs.

1. The State Rep. by
Inspector of Police,
Law and Order,
V-5 Thirumangalam Police Station,
Chennai.

2. T.Mohammed Bilal

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records in C.C.No.1446 of 2013 on the file of the XIII Metropolitan Magistrate Court, Egmore and quash the same.

For Petitioners : M/s.R.Thirumoorthy

For Respondents : Mr.S.Balaji, Govt. Advocate (Crl.Side) [R.1]

: No Appearance [R.2]



ORDER

The petition is to quash the final report for the alleged offences under

Sections 294 (b) and 427 of IPC.

2. It is alleged in the final report that the petitioners are members of a political party and protested against a shop namely Best Price Modern Wholesale Shop run by the de facto complainant stating that the de facto complainant had cheated the general public. It is further alleged that the petitioners had abused the de facto complainant in filthy language and had also caused damage to the property to the tune of Rs.90/-.

3. The learned counsel for the petitioners would submit that it is a case of protest and in any event none of the alleged offences are made out. The allegations do not attract the offences under Section 294(b) as no obscene words were uttered in a public place to the annoyance of others. The allegations to attract the offence under Section 427 is also false and in any event the damage caused is negligible and hence he prayed for quashing of the final report.

4. The learned Additional Public Prosecutor submitted that it is a



matter for trial and points raised by the petitioners cannot be adjudicated in this quash petition.

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5. The petitioners had sent notice to the 2nd respondent, however it was returned with an endorsement "*No such person in the said address*". This Court had requested the learned Public Prosecutor to inform the de-facto complainant about the pending proceedings. It is reported by the learned Additional Public Prosecutor that the 1st respondent police are unable to find out the whereabouts of the 2nd respondent.

6. This Court on perusal of the impugned final report finds that the offence under Section 294(b) is not made out in the instant case. In this regard the judgement of the Hon'ble Supreme Court reported in **2022 LiveLaw (SC) 844 - N.S.Madhanagopal & Anr. Vs. K.Lalitha** is extracted hereunder for better understanding:-

" 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



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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 of the Hon'ble Supreme Court squarely applies to the facts of the present case.



7. As regards the offence under Section 427 IPC, this Court is of the view that this is a case of protest and the alleged loss caused according to the final report is only Rs.90/-. This Court finds that Section 95 of the IPC squarely applies to the facts of the present case. Section 95 of the IPC is extracted hereunder for better understanding:-

" 95. Act causing slight harm. — Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm."

The harm caused in this case is slight and hence this Court is of the view that the continuation of prosecution against the petitioners is an abuse of process of law.

8. For all the above reasons, the impugned final report is quashed. The Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petitions are closed.

05.06.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To

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SUNDER MOHAN. J,

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