



Crl OP No.11096 / 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 27.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.11096 of 2021 and
Crl.M.P.No.6531 of 2021

P.Saraswathi

...Petitioner/ A-4

Versus

1.The Inspector of Police,
Vellimedupettai Police Station,
Tindivanam Taluk,
Villupuram District.

...Respondent/Complainant

2. N.Muthammal

...Respondent/Defacto complainant

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records in C.C.No.58/2020 under Sections 294 (b), 323, 506(2) of IPC pending on the file of Judicial Magistrate Court No.1 at Thindivanam and quash the same as against this petitioner.



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For Petitioner : Mr.T.V.G.Kartheeban
For R1 : Mr. A.Damodaran
Additional Public Prosecutor
For R2 : No Appearance

ORDER

This petition is to quash the impugned proceedings in C.C.No.58 of 2020 for the alleged offences under Sections 294 (b), 323 and 506 (ii) of the Indian Penal Code on the file of the learned Judicial Magistrate Court No.1 at Thindivanam.

2. It is the case of the respondents that the petitioner/A4 on account of prior enmity had assaulted the defacto complainant/second respondent and abused her in filthy language. During the course of investigation, the first respondent/complainant found that the allegation against the petitioner/A4 did not attract the offences alleged and her name was deleted in the final report. It appears that the learned Judicial Magistrate No.I, Tindivanam, at the time of taking cognizance had found that the deletion of the petitioner/A4 in the final report is not sustainable as there are allegations against the petitioner that she had also abused the defacto complainant. The learned Judicial Magistrate No.1, Tindivanam hence, passed an order on 03.09.2020, adding the petitioner as an accused.



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3. Mr.T.V.G.Kartheeban, the learned counsel for the petitioner would submit that the procedure adopted by the learned Judicial Magistrate No.I, Tindivanam, is not in accordance with law; that in any event, the learned Judicial Magistrate No.I, Tindivanam had not taken into consideration the fact that the allegation would not attract the offences alleged against the petitioner; that the offences alleged against the other accused are under Sections 294 (b), 323 and 506 (ii) IPC; that there is no allegation that the petitioner was involved in these alleged offences.

4. Mr.A.Damodaran, the learned Additional Public Prosecutor, *per contra* submitted that it cannot be said that the learned Magistrate has no power to summon a person whose name is not arrayed as an accused in the final report; and relied upon the Judgments of the Hon'ble Supreme Court in (i) ***Nahar Singh Vs. State of Uttar Pradesh and Another*** reported in (2022) 5 SCC 295 and (ii) ***Dharam Pal and others Vs. State of Haryana and Another*** reported in (2014) 3 SCC 306.

5. This Court finds that the procedure adopted by the learned Judicial Magistrate No.I, Tindivanam cannot be faulted. The learned Judicial Magistrate has power to summon persons, who have been deleted



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in the final report if he on the perusal of the materials, comes to the conclusion that the deleted persons are also involved in the offence.

However, the question in the instant case is whether the allegation against the petitioner would attract the offences alleged on facts. The learned Judicial Magistrate No.I, Tindivanam had passed the following order:

“2. Upon perusal of complaint the complainant stated that the Saraswathi abused her filthy language in her complaint she stated that மனோகர் மருமகள் சரஸ்வதி என்பவர் வந்து எவடி இங்கு வந்து பஞ்சாயத்து பணர் எனக் கூறி அசிங்கமாக திட்டினார்.”

6. This Court finds that even if the above allegations are true, it would not constitute any of the offences against the petitioner. The Honourable Apex Court held that in order to attract the offence under Section 294 (b) IPC, the words uttered must be obscene and in a public place to the annoyance of others. In the instant case, there is no such allegation. The observations of the Hon'ble Supreme Court in the Judgment reported in **2022 LiveLaw (SC) 844 – N.S.Madhanagopal and another Vs. K.Lalitha**, is extracted hereunder for understanding:



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“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 is 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.”



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7. There is no allegation that the petitioner had caused hurt or committed criminal intimidation so as to attract the offences under Sections 323 and 506 (ii) of IPC. Hence, this Court is of the view that the learned Judicial Magistrate ought not to have summoned the petitioner as an accused. Thus, the order dated 03.09.2020, adding the petitioner as an accused is set aside.

8. With the above observations, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

27.06.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No



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To
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Tindivanam
2. The Inspector of Police,
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Tindivanam Taluk,
Villupuram District.
3. The Public Prosecutor,
High Court of Madras,
Chennai – 600 104.



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SUNDER MOHAN, J

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