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Crl OP No.8221 / 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.8221 of 2021 and
Crl.M.P.Nos.5440 and 5441 of 2021

Lakshmi

...Petitioner/2nd Accused

Versus

1. The State rep by
Inspector of Police,
All Women Police Station
Attur, Salem District.

2. Tmt. Selvi

...Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records pertaining to the Spl.SC.No.15/2021 on the file of Mahila Court Salem and quash the same in respect of the petitioner/2nd Accused alone.

For Petitioner	:	Mr.B.Sundarapandiyan
For R1	:	Mr. A.Damodaran Additional Public Prosecutor
For R2	:	No Appearance



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ORDER

The petition is to quash the final report for the alleged offences under Sections 294 (b) and 323 of the Indian Penal Code.

2. It is alleged in the final report that the first accused and the defacto complainant/second respondent were husband and wife; that they had matrimonial differences; that hence, the defacto complainant had left the matrimonial house and was living separately; that on 18.10.2018, the defacto complainant dropped her daughter/victim girl in the house of first accused; that on 09.11.2018, the first accused had misbehaved with the victim girl who is his daughter and when the victim girl questioned the first accused about the same, the first accused had left the place; and thus, the first accused committed the offence under Section 9 (m) (n) r/w 10 of the Protection of Children from Sexual Offences Act. It is further alleged that when the defacto complainant questioned the petitioner/second accused who is the mother of the first accused, the petitioner had abused her in filthy language and had slapped the victim girl.

3. Mr.B.Sundarapandiyan, the learned counsel for the petitioner would submit that the first accused and the defacto complainant had



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matrimonial differences and were living separately for more than 2½ years; that since the victim girl wanted to celebrate her birthday with her father, the defacto complainant left the child in the house of the first accused and even assuming the first accused committed the said offence, the petitioner has nothing to do with the alleged offences or with the matrimonial differences. He submitted that the impugned final report itself is malafide and only to wreak vengeance on the first accused; that in any case, the offences alleged against the petitioner is under Sections 294 (b) and 323 of the Indian Penal Code; that the said offences are not made out and hence, he prayed for quashing of the final report.

4. Mr.A.Damodaran, the learned Additional Public Prosecutor, for the first respondent submitted that there are allegations in the impugned final report and hence, it has to be adjudicated only before the trial Court and he prayed for dismissal of the quash petition.

5. Though notice has been served to the second respondent, none has entered appearance on behalf of the second respondent.



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6. This Court, on perusal of the impugned final report finds that the allegation is primarily against the first accused for commission of the offence under the various provisions of POCSO Act. Admittedly, there was a matrimonial difference between the second respondent/defacto complainant and the first accused. The petitioner/second accused is the mother of the first accused. The allegations against the petitioner even if accepted to be true, do not attract any of the offences. The offence under Section 294 (b) of IPC is not made out as no obscene words were uttered in a public place. Further, this Court finds that as regards the offence under Section 323 IPC, it is the case of the prosecution that the Grand-mother had slapped the Grand-daughter. The penal law is not intended to criminalise such acts. Even if the said allegation is true, the said assault cannot be treated as an offence, in view of the Section 95 of the Indian Penal Code. Section 95 of the Indian Penal Code 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."



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7. The allegation suggest that it causes slight harm and cannot be subject matter of a prosecution. Hence, this Court is of the view that the impugned final report as against the petitioner/second accused alone is liable to be quashed.

8. With the above observations, this Criminal Original Petition is allowed. Consequently the connected Miscellaneous Petitions are closed.

27.06.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Mahila Court, Salem

2. The Inspector of Police,
All Women Police Station
Attur, Salem District.

3. The Public Prosecutor,
High Court of Madras,
Chennai – 600 104.



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SUNDER MOHAN, J

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