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CrI.O.P.No.15338 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.06.2023

CORAM:

THE HON'BLE MR.JUSTICE **SUNDER MOHAN**

CrI.O.P.No.15338 of 2021
and
CrI.M.P.Nos.8376 & 8377 of 2021

1. Ameer Sulthan
2. Abdul Amir
3. Rameez Raja
4. Rowaiz Hanifa
5. Nabisha Begum

... Petitioners

Vs.

1. State Represented by,
The Inspector of Police,
North Beach Police Station,
Chennai (Crime No.22/2018).

2. Mrs.Santhini Devi

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records and quash the proceedings in C.C.No.673 of 2020 pending on the file of the VII-Metropolitan Magistrate Court at George Town.



CrI.O.P.No.15338 of 2021

For Petitioner : Mr.V.Paarthiban
For Respondents :
For R1 : Mr.A.Damodaran
Additional Public Prosecutor
For R2 : No Appearance

ORDER

The petition is to quash the impugned final report for the alleged offences punishable under Sections 147, 148, 294(b), 323, 324 and 506(2) of IPC.

2. It is alleged in the final report that the petitioners had attacked the defacto complainant and other witnesses with hands and threatened them with dire consequences. Hence, the complaint.

3. Mr.V.Paarthiban, learned counsel for the petitioners submitted that;

(a) The impugned final report is unsustainable. The third petitioner had already lodged a complaint against the second respondent and others in Crime No.23 of 2018 on the file of the respondent police. During the course of the investigation, the respondent police had filed a final report in C.C.No.674 of 2020, on the file of the learned VII Metropolitan Magistrate, George Town.



(b) In respect of the same occurrence, the respondent police had filed two final reports, which are contrary to each other. There cannot be two final reports which are contrary to each other. Thus, the respondent ought to have ascertained as to who the aggressors were and filed final report only against them. In the instance case, filing of two final reports with contrary versions cannot be sustained.

(c) The offences alleged are not made out. The offence under Section 294 (b) of IPC is not made out as obscene words were uttered. Further, the offence under Section 506 (2) of IPC is also not made out as there is no real threat.

(d) Further, there is no evidence to suggest that the petitioners were attacked. The evidence of the doctor would show that no wound certificate was issued to the witnesses and hence, he prayed for the quashing of the Final Report.

4. Mr. A.Damodaran, learned Additional Public Prosecutor, appearing on behalf of the first respondent, would submit that;



(a) It is a fact that on the complaint given by the third petitioner, a case in Crime No.23 of 2018 was registered and Charge Sheet was filed in C.C.No.674 of 2020, on the file of the learned VII Metropolitan Magistrate, George Town, Chennai.

(b) There are allegations in the final report which has to be adjudicated only before the Trial Court and hence, he prayed for the dismissal of the quash petition.

5. Though notice was served on the second respondent, none has entered on behalf of her.

6. This Court, on perusal of the impugned final report and on hearing the submissions of the learned counsel for the petitioners finds that in respect of same occurrence, the respondent police have filed two final reports.

7. It is a matter of common sense that there cannot be two versions in respect of the same incident which are contrary to each other. Either both the versions have to be false or one version has to be false. This Court cannot permit the prosecution to continue knowing that one or both versions are false.



8. Further, it is also seen that the allegations in the final report also does not disclose the offences alleged. The offence under Section 294 (b) of IPC is not made out as no obscene words were uttered in a public place to the annoyance of others. The Hon'ble Supreme Court in the Judgment reported in **2022 LiveLaw (SC) 844 – N.S.Madhanagopal and another Vs. K.Lalitha**, had 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. “

9. Further, the offence under Section 506 (ii) of IPC is also not made out on the allegations. This Court had repeatedly held that in order to attract the offence under Section 506 (ii) IPC, there must be a real threat. 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. ...”*



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10. The other offences are also not made out on the allegations.

For all the above reasons, and since in the instant case, there are two final reports which are contrary to each other which is likely to cause prejudice to the petitioners, the impugned final report is liable to be quashed and hence, quashed. Accordingly, Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

21.06.2023

Speaking Order / Non-Speaking Order
Neutral Citation: Yes / No
rgm

To

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

2. The Inspector of Police,
North Beach Police Station,
Chennai (Crime No.22/2018).



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