



Crl.O.P.No.23117 of 2019

THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.23117 of 2019

and

Crl.M.P.Nos.12104 of 2019 5015 of 2023

1. K.Varunkumar

2. V.Amutha

... Petitioners

Vs

1. State by Inspector of Police,
Uthukuli Police Station,
Tiruppur,
(Crime No.97/2018)

2. K.Muthusamy (Died))

3. Mahalakshmi

4. Jagadeeswari ... Respondents
(R3 & R4 impleaded as per order dated 10.11.2023
made in Crl.M.P.No.5015 of 2023 in
Crl.O.P.No.23117 of 2019)

PRAYER: Criminal Original Petitions filed under Section 482 Cr.P.C. to
call for the records relating to the complaint in C.C.No.82 of 2019 on the
file of the Judicial Magistrate, Avinashi and quash the same.



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For Petitioner : Mr.I.Abrar MD Abdullah
For Respondent 1 : Mr.L.Baskaran
Government Advocate (Crl.Side)
For Respondents 3 &4 : Mr.R.John Sathyan,
Senior Counsel for
Mr.K.Sudhakar

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.82 of 2019 on the file of the learned Judicial Magistrate, Avinashi registered for the offences under Sections 147, 148, 447, 294(b), 324 and 506(ii) of IPC.

2. The case of the prosecution is that the 2nd respondent owns mill and carrying business. He also owns Senthil rice mill at Theneswarampalayam which was actually leased out in the year 2007 to one Naresh Surana. He is carrying the business of sheet company in the name and style of M/s.Harihindh in the said property. He had handed over the sheet company to his wife namely Seema Surana in the year 2016. She was running a company in the name and style of K.R. Packaging. She had given a sum of Rs.10,00,000/- along with amount of



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Rs.1,50,000/- as advance to the Defacto-complainant. The said Seema Surana, her sister's husband i.e., Bippul Lalvani were working as partner in the said business. Due to some quarrel between the husband of the original lessee and her sister's husband i.e., the 1st accused in the month of November, everybody had left out the business and went to their native place at Rajasthan. While being so, the 1st accused demanded the advance amount of Rs.11,50,000/- from the Defacto-complainant. On 26.02.2018 at about 5.30p.m, when the defacto complainant along with his watchman and Gardener were standing in front of his mill gate, the accused persons came to the mill with car and scolded the defacto-complainant by using filthy languages and also attacked him. Hence the complaint.

3. On receipt of the said complaint, the 1st respondent registered FIR in Crime No.97 of 2018 for the offences under section 147, 148, 447, 294(b), 324, 506(ii) of IPC. After completion of investigation the 1st respondent filed final report and taken cognizance by the Trial Court in C.C.No.82/2019.



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4. The learned counsel for the petitioner submitted that the petitioners are arrayed as Accused No.5 and 6. They are none other than the counsels for 1st accused and they are practising advocates. They are arrayed as Accused No.5 and 6. He also pointed out that the 1st accused filed a suit for permanent injunction as against the Defacto-complainant. Even according to the case of the prosecution, they came to the place of occurrence and scolded with filthy languages. Except the said allegation, no other allegations are made against them. So far as other accused persons, they threatened the Defacto-Complainant and attacked him. The petitioners are being the counsels for 1st accused have been falsely implicated in this case.

5. The learned Senior Counsel appearing on behalf of the 2nd respondent submitted that the 2nd respondent died. However his legal heirs are impleaded and are looking after the case. He further submitted that there are specific case as against the petitioners. Though they are counsel on record for the 1st accused, they are charged for the offence under sections 147, 294(b), 448 of IPC.

6. Heard, the learned counsel appearing on either side.



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7. On perusal of the records, it reveals that there are totally six accused. These petitioners are arrayed as Accused No.5 and 6. Both are husband and wife and counsels for 1st accused. Their junior is also arrayed as Accused No.2.

8. According to the case, the defacto complainant is liable to return the advance amount of Rs.11,50,000/-. In that regard, the 1st accused also filed a suit for permanent injunction as against the deceased/ 2nd respondent, restraining him from interfering with the 1st accused's peaceful possession and enjoyment of the suit property as tenant and thereby evicting the 1st accused from the suit property except only under due process of law. The said suit is filed by the petitioners in O.S.No.59/2018 on the file of the District Munsif Court, Avinashi.

9. On perusal of the statement of the deceased 2nd respondent and other witnesses revealed that the petitioners also went to the mill. The same was clearly deposed by the deceased 2nd respondent. However, no specific allegation as against the petitioners to attract the offences under



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sections 147, 294(b), 448 of IPC as alleged by the prosecution. Even according to them, they entered into the mill and scolded the deceased 2nd respondent with filthy languages. Admittedly, the 1st accused holds the right over the said mill. The offence under section 448 of IPC is not at all attracted as against the petitioners.

10. To attract the offence under Section 294(b) of IPC, there must be an uttering of words to affect the person who lodged the complaint. In this regard it is relevant to extract the Section 294(b) of IPC, as follows :-

"294. Obscene acts and songs —Whoever, to the annoyance of others— (a) does any obscene act in any public place, or (b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."

Admittedly, there is absolutely no words uttered by the petitioners as such to constitute the offence under Section 294(b) of IPC, there is no averments and allegations. Further the charges do not show that on hearing the obscene words, which were allegedly uttered by the



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petitioners, the witnesses felt annoyed. 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 petitioners annoyed others, it can not be said that the ingredients of the offence under Section 294(b) of IPC is made out.

11. It is relevant to rely upon the judgment reported in **1996(1) CTC 470** in the case of **K.Jeyaramanuju Vs. Janakaraj & anr.**, which held as follows :-

"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."

The above judgment is squarely applicable to the present case and therefore, the offence under Section 294(b) of IPC is not at all attracted as against the petitioners.



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12. The petitioners are being counsel for the 1st accused, they were falsely implicated in the case. Therefore the entire proceedings as against the petitioners cannot be sustained and it is liable to be quashed. Accordingly, the entire proceedings in C.C.No.82 of 2019 on the file of the Judicial Magistrate, Avinashi is quashed and this Criminal original Petition is allowed. Consequently, connected miscellaneous petitions are allowed.

10.11.2023
(1/2)

Internet: Yes
Index: Yes/No
Speaking/Non-speaking order
gvn



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To

- 1) The Judicial Magistrate,
Avinashi
- 2) The Inspector of Police,
Uthukuli Police Station,
Tiruppur.
- 3) The Public Prosecutor,
High Court Madras.



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G.K.ILANTHIRAIYAN, J.

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