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CrI.OP.No.25083 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.11.2023

CORAM:

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

CrI.OP.No.25083 of 2021
and CrI.MP.No.13814 of 2021

Gabriel @ Kabiriyel

... Petitioner

Vs.

1.The State

Rep. By the Inspector of Police,
Manalmedu Police Station,
Mayiladuthurai

2.Velmurugan

... Respondents

PRAYER: Criminal original petition is filed under Section 482 of Cr.P.C. to call for the records in STC.No.225 of 2019 on the file of the learned Judicial Magistrate-I Court, Mayiladuthurai and to quash the same.

For Petitioner

: Mr.R.Thirumoorthy

For Respondents

For R1

: Mr.A.Gopinath,
Government Advocate(CrI.side)

For R2

: No appearance

ORDER

This Criminal Original Petition has been filed to quash the proceedings in STC.No.225 of 2019 on the file of the learned Judicial



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Magistrate-I, Court, Mayiladuthurai, thereby taken cognizance for the offences under Sections 294(b) and 506(i) of IPC, as against the petitioner.

2. The case of the prosecution is that the second respondent lodged complaint alleging that on 12.06.2019 at about 10.30 p.m., he received a phone call from the petitioner, wherein the petitioner alleged to have abused him and issued life threat to him over phone. On receipt of the said complaint, the first respondent registered FIR in crime No.126 of 2019 for the offence under Sections 294(b) and 506(i) of IPC. After completion of investigation, final report was filed and the same has been taken cognizance by the trial court in STC.No.225 of 2019.

3. On perusal of records, even according to the case of the prosecution, the petitioner alleged to have threatened the defacto complainant over phone. Therefore, no offence is made out under Section 294(b) of IPC. That apart, when the petitioner is a life convict and he was on parole, the present case has been registered against the petitioner. Even according to the second respondent, the petitioner phoned to him and scolded him with filthy languages and he also threatened him with dire consequences.



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4. 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."

5. Admittedly, there is absolutely no words uttered by the petitioner 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 petitioner, 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 petitioner annoyed others, it cannot be said that the ingredients of the offence under Section 294(b) of IPC is made out.

6. 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 :-



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"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 petitioner.

7. Insofar as the offence under Section 506(i) of I.P.C is concerned, to attract the offence, threat and intention to cause an alarm are main ingredients. The third ingredient is that the intention must be to cause any person to do any act which he is not legally bound to do or to omit to do any act which that person is legally entitled to do, subsequent to the main ingredients. Whereas in the case on hand, even according to the case of the prosecution, the alleged threats issued by the petitioner were only empty threats and they had no effect on the complainant.

8. In this regard, It is relevant to rely upon the judgment of this Court made in ***CrI.O.P.(MD)No.11030 of 2014*** in the case of ***Abdul Agis Vs. State through the Inspector of Police***, which reads as follows:-



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“7.It is seen from the statements recorded under Section 161(3) of Cr.P.C. of the second respondent/ defacto complainant that it does not contain any obscene words, which were uttered by the petitioner herein and the entire allegations are very simple in nature. It is also seen from the statement of one Uthami, that the petitioner threatened the defacto complainant with dire consequences when he dashed the defacto complainant. The entire allegations are trivial in nature. Further, to attract the offence under Section 506(i) of I.P.C., there was a threatening only by words. As pointed by the learned counsel appearing for the petitioner, the threat should be a real one and not just a mere word when the petition uttering does not exactly mean what he says and also when the person to whom threat is launched does not feel threatened actually. Therefore, the offences under Sections 294(b) and 506(i) of I.P.C. are not made out as against the petitioner herein and also the entire criminal proceedings is clear an abuse of process of Court. Therefore, this Court is inclined to quash the entire proceedings.”

9. A reading of definition of criminal intimidation indicates that there must be an act of threatening any person or causing injury to the person, reputation or property, or to the person or reputation of anyone in whom that



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person is interested, with intent to cause alarm to that person or it must be to do any act which he is not legally bound to do or made to do an act which he is legally entitled to do. Therefore, there must be with intention to cause alarm to the second respondent to cause that person to do or omit to do any work. Mere expression of any words without any intention to cause alarm would not be sufficient to bring in the application of offence under Section 506(i) of IPC. Therefore, the allegations levelled against the petitioner does not satisfy the ingredients of Section 506 (i) of IPC.

10. In view of the above, the impugned proceedings cannot be sustained and the same is liable to be quashed. Accordingly, the impugned proceedings in STC.No.225 of 2019 on the file of the learned Judicial Magistrate-I Court, Mayiladuthurai is quashed and this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

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Index :Yes/No

Internet : Yes/No

Speaking order/non-speaking order

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To

- 1.The learned Judicial Magistrate-I Court,
Mayiladuthurai
- 2.Inspector of Police,
Manalmedu Police Station,
Mayiladuthurai
- 3.The Government Advocate,
High Court of Madras



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