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Crl.O.P.No.28815 of 2019
& Crl.M.P.No.15384 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.12.2023

Coram:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.28815 of 2019
& Crl.M.P.No.15384 of 2019

1. S.M.Nasar.

2. S.Habeeb.

... Petitioners/Accused

/versus/

1. State Rep. By its,
Inspector of Police,
T-6, Avadi Police Station,
Ambattur District,
Chennai.

... 1st Respondent/Complainant

2. R.C.Deenadayalan.

... 2nd Respondent/defacto complainant.

Prayer: Criminal Original Petition is filed under Section 482 of Cr.P.C., pleased to call for the records in C.C.No.279 of 2017 on the file of the Learned Judicial Magistrate – II, Poonamalle and quash the same.

For Petitioners : Mr.S.V.Chandru,
for Mr.E.Raj Thilak.

For R1 : Mr.M.Babu Muthu Meeran,
Additional Public Prosecutor.

For R2 : Not ready notice



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ORDER

This Criminal Original Petition is filed to call for the records in C.C.No.279 of 2017 on the file of the Learned Judicial Magistrate – II, Poonamalle and quash the same against these petitioners for the alleged offence under Section 294(b) and 506 (ii) of I.P.C.

2. It is a case where in the course of election campaign, members of two parties have clashed and case and counter case been registered. As far as the complaint given by one R.C.Deenadayalan taken on file in Crime No.805 of 2016 dated 11.05.2016.

3. On completion of investigation, final report filed before Judicial Magistrate – II, Poonamalle and taken on file in C.C.No.279 of 2017 for offence under Section 294(b) and 506(ii) of I.P.C.

4. The Learned Counsel appearing for the petitioners vehemently argued that, neither the complaint nor the statement of witnesses attribute anything specific against these petitioners herein. A vague complaint without attributing any overt act specifically against these petitioners been taken cognizance by the



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trial Court. Reading of Section 161 Cr.P.C., statement of witnesses and the complaint, the Learned Counsel for the petitioners submitted that though in the complaint it is stated that, before the informant/defacto complainant went to the spot on hearing that members of the opposite party are disbursing money for vote, the Election Observers and Police were there but the final report did not contain any statement of witnesses, who belong to Police Department or Election duty Officers. Further, the Learned Counsel for the petitioners submitted that to attract offence under Section 294(b) of I.P.C., there must be specific averment about the abusive word used and the person, who has uttered the obscene word. In the entire statements of witnesses relied by the prosecution, no one has attributed specifically implicating the petitioners herein as a person who uttered the obscene word.

5. The prosecution has relied upon 8 witnesses including the Inspector of Police, who has investigated the case. Though, as contended by the Learned Counsel that no specific overt act against these petitioners attributed in the statement of witnesses, the fact remains that the witnesses have invariably stated about the presence of these petitioners and the commotion. Only in the course of the trial, the charge against these petitioners could be tested. His presence coupled



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with utterance of obscene word and attempt to ride over the defacto complainant in the car bearing Reg.No.TN-12-P-9999 presumably owned by the petitioner herein.

6. The Learned Counsel appearing for the petitioners submitted that the petitioner/S.M.Nasar is presently a sitting member of Tamil Nadu Legislative Assembly and therefore, his physical presence during the days of trial may be dispensed with. The petitioner's request shall be made to the trial Court unless and until his identification by witness is required or for any other purpose, the trial Court may consider the petition filed under Section 317 of Cr.P.C.

7. Hence, this Court holds that it is not a fit case to be quashed without process of trial. Accordingly, this ***Criminal Original Petition is dismissed.*** Consequently connected Miscellaneous Petition is closed.

13.12.2023

Index :Yes/No.
Internet :Yes/No.
Speaking Order/Non-Speaking Order
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1. The Judicial Magistrate – II, Poonamalle.
2. The Inspector of Police, T-6, Avadi Police Station,
Ambattur District, Chennai.
3. The Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN, J.

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