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Crl.O.P.No.31904 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.04.2023

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THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P. No. 31904 of 2019

and

Crl.M.P. No. 17494 of 2019

1. Abinaya

2. A.Kayamboo

3. B.Gandhimathi

4. K.Arunprakash

5. D.Mani Teja

... Petitioners

Vs.

1. The State Represented by
Inspector of Police,
Chitlapakkam Police Station,
St. Thomas Mount, Chennai.

2. K.Akilan

... Respondents



Crl.O.P.No.31904 of 2019

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in Crime No.623/2019 on the file of the Inspector of Police, Chitlapakkam Police Station, St. Thomas Mount, Chennai viz., the 1st respondent herein and quash the same.

For Petitioners : Mr.V.Vijayashankar

For Respondent 1 : Mr. A.Damodaran
Additional Public Prosecutor

For Respondent 2 : No Appearance.

ORDER

The petition is to quash the FIR for the alleged offences under Section 294 (b) and 506 (i) of IPC.

2. It is alleged in the FIR that the defacto complainant who is the husband of the 1st petitioner went to the house of the 1st petitioner to visit his child. The 2nd respondent was abused and denied visitation rights in violation of the order dated 28.03.2019 passed by the Sub Court, Tambaram in I.A.No.75 of 2019 in O.P.No.659 of 2017.



3. The learned counsel for the petitioners submitted that a dispute between the husband and wife relating to custody of the child is sought to be projected as a criminal case. The 2nd respondent had not visited the child inspite of the orders of this Court in C.R.P.(PD).No.1545 of 2019. In any event the allegations did not attract the offences of Section 294 (b) and 506 (i) of IPC. There is nothing in the impugned FIR to state as to what were the words uttered by the petitioners in a public place to attract the offence under Section 294 (b) IPC. The offence of Section 506 (i) IPC is also not made out as there is no real threat alleged in the impugned FIR.

4. The learned Additional Public Prosecutor submitted that the allegations attract the offences and prayed for a dismissal of the quash petition.

5. Though notice was served on the 2nd respondent, he has not entered appearance. However, he had informed the respondent Police that he intended to continue with the prosecution and prayed for dismissal of the quash petition.



6. It is stated in the FIR that the 2nd respondent went to the house of the 1st petitioner to visit the child as per the orders passed by the Sub Court, Tambaram, in I.A.No.75 of 2019 in O.P.No.659 of 2017. The 2nd respondent was denied entry and was abused in a filthy language by the petitioners.

7. This Court finds that the impugned FIR does not contain any allegation to attract the offence under Section 294 (b) of IPC. This Court had time and again held that in order to attract the said offence, obscene words must be uttered in a public place to the annoyance of the others. The impugned FIR is silent about the alleged words uttered by the petitioners. The Hon'ble Supreme Court in the Judgement reported in **2022 LiveLaw (SC) 844 – N.S.Madhanagopal and another Vs. K.Lalitha**, has 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. “

Hence, the offence under Section 294 (b) of IPC is not made out.

8.As regards Section 506 (i) IPC, there is no allegation to infer real threat attracting the offence of criminal intimidation.

9. Further, this Court finds that the 1st petitioner had filed a petition seeking for modification of order passed in I.A.No.75 of 2019



in O.P.No.659 of 2017, since the child was refusing to meet the 2nd respondent. This Court in C.R.P.(PD)No.1545 of 2019 dated 02.07.2019 had observed as follows:

“Today, when the matter was listed before me at my Chambers, I was informed by Mr.Vijay Shankar that the respondent's father had not turned up for the meeting and the learned counsel for the respondent had also not informed Mr.Vijay Shankar that his client was not coming to meet the child. The minor child and her mother had come all the way and waited for the respondent's arrival. The conduct of the respondent cannot be appreciated by this Court since the affected party is a minor child, who is just aged 7 years and the impact on the child's mind has not been taken note of by the respondent's father.”

The impugned FIR has been lodged after the aforesaid order was passed by this Court. A dispute with regard to custody is sought to given a criminal colour. For all the above reasons, the impugned FIR is an abuse of process of law and is liable to be quashed.



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10. Accordingly, the quash petition is allowed. Consequently,
the connected miscellaneous petition is closed.

26.04.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation :Yes/No
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To

The Inspector of Police,
Chitlapakkam Police Station,
St. Thomas Mount, Chennai.



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SUNDER MOHAN. J,

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