



CrI.O.P.No.33939 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2023

CORAM:

THE HONOURABLE MR. JUSTICE **SUNDER MOHAN**

CrI.O.P.No.33939 of 2019

and

CrI.M.P.No.18724 of 2019

Sivakami

...Petitioner/Accused

-Vs-

1.The State rep.by

The Sub-Inspector of Police,
Arcot Town Police Station,
Vellore District.

(Crime No.578 of 2019 dated 02.09.2019)

.. 1st respondent / Complainant

2.S.Nathiya

... 2nd respondent / De-facto Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for records relating to the First Information Report in Crime No.578 of 2019 on the file of the 1st respondent and to quash the same.



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For Petitioner : Mr.C.Arun Kumar
For R1 : Mr.S. Balaji,
Government Advocate (Crl. Side)
For R2 : No appearance

ORDER

This Criminal Original Petition has been filed seeking to quash the First Information Report in Crime No.578 of 2019 on the file of the 1st respondent, filed for the alleged offence under Sections 294(b), 323 and 506(i) of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of women Act, 2002.

2(a).The learned counsel for the petitioner would submit that the petitioner is a lady and no offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002 would be maintainable against a woman. He relied upon the judgment of this Court reported in ***2006 (4) CTC 374, Basheer Ahamed and others Vs. State, rep.by the Inspector of Police, W13, All Women Police Station, Washermenpet Circle, Chennai – 2021.***



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2(b).The learned counsel would further submit that the other offences under Sections 294(b) and 506(i) IPC are not made out. The alleged words uttered is neither obscene nor amounts to real threat. With regard to offence under Section 323 IPC, there is no allegation that the petitioner had caused hurt to the de-facto complainant. Hence, he prayed for quashing of the First Information Report in Crime No.578 of 2019.

3.The learned Government Advocate (Criminal Side) would submit that there are allegations in the First Information Report and in fact, the police had investigated the impugned First Information Report and had filed a final report before the concerned trial Court. However, the said final report is yet to be taken on file. Hence, he prayed for dismissal of the quash petition.

4.This Court finds on perusal of the impugned First Information Report and the Final Report submitted by the 1st respondent that the allegation against the petitioner would not attract the offence under Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002, since the petitioner is a woman. A useful reference may be made to



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the observation of this Court in **2006 (4) CTC 374, Basheer Ahamed and others Vs. State, rep.by the Inspector of Police, W13, All Women Police Station, Washermenpet Circle, Chennai – 2021**, which is extracted below:

“9. There is a specific allegation of harassment as against the husband as well as the father-in-law by the de facto complainant. Therefore the first accused and the second accused will have to face trial. The Petition is thus partly allowed. Going by the definition under Section 2(a) of the said Act, there can be no allegation of harassment as against the woman. Therefore the charges as against the mother-in-law (A-3) will have to be quashed.”

5. As regards the offence under Section 294(b) IPC, the Hon'ble Supreme Court in **N.S. Madhanagopal and Another Vs. K. Lalitha** reported in **2022 LiveLaw (SC) 844**, had held that in order to constitute the offence under Section 294(b), the words uttered must be obscene and not merely abusive, humiliating or defamatory. The relevant portion is extracted hereunder:



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“It has to be noted that in the instant 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 of 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 cannot be said that the ingredients of the offence under Section 294(b) of IPC is made out.”

6.As regards the offence under Section 323 IPC, there is no allegation to attract the alleged offence.



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7.As regards Section 506 (i) of IPC, the allegation does not amount to real threat in order to attract the offence of Section 506 (i) of IPC.

8.Therefore, this Court is of the view that the impugned First Information Report in Crime No.578 of 2019 on the file of the 1st respondent is liable to be quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

12.04.2023

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Index : Yes/No

Speaking order: Yes/No

Neutral citation : Yes/No



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To,

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1.The Sub-Inspector of Police,
Arcot Town Police Station,
Vellore District.

2.The Public Prosecutor,
High Court of Madras.



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