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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12/06/2023

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The Hon'ble Mr.Justice **G.ILANGO VAN**

Cr1.OP(MD)No.7873 of 2023

and

Cr1.MP(MD)Nos.6880 and 6882 of 2023

Esakki Durai @ Esakki : Petitioner/Sole Accused

Vs.

1.The Sub Inspector of Police,
Tharuvaikulam Police Station,
Thoothukudi District.
(Crime No.101 of 2021) : R1/Complainant

2.Anthony : R2/De-facto Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to CC No.580 of 2022 on the file of the District Munsif-cum-Judicial Magistrate, Ottapidaram, Thoothukudi and quash the same and pass any other orders.

For Petitioner : Mr.A.P.Muthupandian

For 1st Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor

**ORDER**

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This criminal original petition has been filed seeking quashment of the case in CC No.580 of 2023 on the file of the District Munsif-cum-Judicial Magistrate, Ottapidaram, Thoothukudi District.

2. The case of the prosecution in brief:-

The de-facto complainant and the accused company are engaging in transporting coal from Melmaruthoor to Costal Energy Power Plant and because of the above said business, there was enmity between them and difference of opinion arose between the above said persons, over the following the line and seniority. So the de-facto complainant as the Vice President of the Lorry Drivers Association asked the Company Supervisor to follow the line. Because of the above said advise, the accused developed enmity and on 18/06/2021 at about 01.00 am, when the de-facto complainant lorry and other transport lorries were waiting in the line, the accused came there, abused the de-facto complainant in filthy language and also criminally intimidated. Over the above said occurrence, a case in Crime No.101 of 2021 was registered



for the offences under sections 294(b) and 506(i) IPC. After completing the formalities of investigation, final report was filed and it was taken cognizance in CC No.580 of 2022 on the file of the District Munsif-cum-Judicial Magistrate, Ottapidaram, Thoothukudi District.

3. Seeking quashment of the same, this petition has been filed by the petitioner on the sole ground that none of the allegations mentioned, either in FIR or in the final report attract any of the ingredients as alleged against the petitioner.

4. Heard both sides.

5. The learned counsel appearing for the petitioner would straightaway draw the attention of this court to the allegations made in the final report. It has been simply stated that the de-facto complainant was abused in filthy language by the accused

6. Section 294(b) IPC reads as follows:-

"294(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."

7. Now coming to the legal ground, the statement of law on this issue has been clarified by the Hon'ble Supreme Court the Hon'ble Supreme Court in the case of ***N.S.Madhanagopal and another Vs. K.Lalitha (2022 LiveLaw (SC) 844)***.. Let me extract the settlement of law for better appreciation.

".....the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences". This test has been uniformly followed in India. The Supreme Court has accepted the correctness of the test in Ranjit D.Udeshi V. State of Maharashtra, AIR 1965 SC 881. In Samuel Roth V. U.S.A., 354 US 476(1957), Chief Justice Warren said that the test of 'obscenity' is the "substantial tendency to corrupt by arousing lustful desires". Mr. Justice Harian observed that in order to be 'obscene' the matter must 'tend to sexually impure thoughts'. I do not think



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that the words uttered in this case have such a tendency. It may be that the words are defamatory of the complainant, but I do not think that the words are 'obscene' and the utterance would constitute an offence punishable under S.294(b) IPC."

8. So when we apply the above said statement of law, I am of the considered view that not even the obscene words alleged to have been spoken by the petitioner has been stated by the de-facto complainant. But mere allegation that the petitioner used the abusive word does not satisfy to attract the offence under section 294(b) IPC. So when we read the final report, in the context of the Hon'ble Supreme Court decision in the case of N.S.Madhanagopal and another Vs. K.Lalitha (2002 LiveLaw (SC) 844), it is seen that the ingredients of section 294(b) IPC are not attracted.

9. With regard to the offence under section 506(i) IPC, it has been simply stated that he will kill the de-facto complainant and will throw his body in the sea.



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10. Section 503 IPC reads as follows:-

"503. Criminal intimidation. —

Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that 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, as the means of avoiding the execution of such threat, commits criminal intimidation."

11. When we draw the allegation mentioned in the final report to the ingredients, it is also seen that it is not attracted. A simple abusive word alleged to have been exaggerated as if he was criminally intimidated and abused in filthy language. The parties ought to have settled the issue by themselves. A trivial issue has been given exaggeration.



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12.For the above stated reasons, this criminal original petition is **allowed**. The case in CC No.580 of 2022 on the file of the District Munsif-cum-Judicial Magistrate, Ottapidaram, Thoothukudi District is hereby quashed as against the petitioner. Consequently, connected Miscellaneous Petitions are closed.

12/06/2023

Index:Yes/No
Internet:Yes/No

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WEB COPY To,

- 1.The District Munsif-cum-Judicial Magistrate,
Ottapidaram,
Thoothukudi District.
- 2.The Sub Inspector of Police,
Tharuvaikulam Police Station,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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