



CrI.O.P.(MD)No.6477 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.08.2023

CORAM

THE HON'BLE MR.JUSTICE P.DHANABAL

CrI.O.P.(MD)No.6477 of 2020

and

CrI.M.P.(MD)Nos.3316 & 3317 of 2020

Renish

... Petitioner

Vs.

1.State rep by

The Sub Inspector of Police,
Kottar Police Station, Kottar,
Kanyakumari District.
(In Cr.No.45 of 2019)

2.Mathavan Pillai

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the charge sheet in C.C.No.307 of 2019 on the file of the Judicial Magistrate No.II, Nagercoil in Cr.No.45 of 2019 on the file of the first respondent and quash the same in respect of the petitioner as illegal.

For Petitioner : Mr.G.Anto Prince



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For R1 : Mr.M.Sakthi Kumar,
Government Advocate (CrI. Side)

For R2 : No Appearance

ORDER

This Criminal Original Petition has been filed to quash the charge sheet in C.C.No.307 of 2019 on the file of the Judicial Magistrate No.II, Nagercoil as against the petitioners.

2.According to the petitioner, the first respondent registered FIR in Cr.No.45 of 2019 for the offence under Sections 294(b), 353, 506(ii) IPC and thereafter, the petitioner was arrested and remanded to judicial custody. Then, the first respondent investigated the case and filed final report as against the petitioner and the same was taken on file in C.C. No.307 of 2019 by the learned Judicial Magistrate No.II, Nagercoil. Prosecution case is that on 08.02.2019 at about 10.00 pm., when the Sub Inspector was on duty at Kottar Police Station, the defacto complainant, who is the Special Sub Inspector of Police, had appeared before him and gave complaint stating that on 08.02.2019, when the defacto complainant



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on duty at night patrol at around 1.30 am., along with Special Sub Inspector of Police, they enquired name and address of the accused person, near Irullappapuram Sivan Kovil Street, at that time, the accused abused the defacto complainant in filthy language and thereby, restrained the defacto complainant and other two policemen from discharging their official duty and they also criminally intimidated them. When the defacto complainant tried to catch the accused, he ran away from the scene of occurrence. Hence, the defacto complainant lodged a complaint and FIR was also registered in Cr.No.45 of 2019 and final report also filed. In fact, the accused was student at Cape Polytechnic College. When he was on the way to his house, the respondent police and the defacto complainant abused the petitioner and also assaulted him for the reasons best known to them. Only in order to defend themselves from further prosecution, the present complaint was lodged as against the petitioner. Even according to the compliant and final report, no offences are made out. Since the defacto complainant is the Police, without conducting proper investigation, final report was filed and thereby, final report is liable to be quashed.



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3.No counter was filed by the respondents.

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4.The learned counsel appearing for the petitioner would contend that the petitioner was a student at the time of occurrence and no such occurrence was happened as alleged in FIR. In fact, the defacto complainant and other police only assaulted the petitioner in the name of enquiry and also harassed him and thereby, he was taken to the police station, there also, he was assaulted by the police and then, he was remanded to judicial custody. In order to escape from the legal steps, which would be taken by the petitioner, the defacto complainant has given false complaint. Even as per the complaint, there is no ingredients to prove offence under Sections 353 and 506(ii) IPC and only they inserted abusive words in the particulars of the complaint and no such occurrence was happened. Even as per the contention of FIR, the allegations are unbelievable. Therefore, pending charge sheet as against the petitioner is clear abuse of process of law. Hence, impugned charge sheet is liable to be quashed.

5.The learned Government Advocate(Crl.side) appearing for the first respondent would submit that on the date of occurrence, when the



defacto complainant along with police were on patrol duty, the petitioner came there and they enquired him. During the course of enquiry, the petitioner abused the police officials in filthy language and threatened them and thereby, he restrained the police official from discharging official duty. Thereafter, he ran away from the place of occurrence. Hence, the defacto complainant lodged a complaint and then, the first respondent registered FIR. After elaborate investigation, since there are prima facie materials available to proceed further as against the petitioner, the first respondent filed final report. At this stage, the charge sheet as against the petitioner cannot be quashed and the petitioner has to face the trial. Therefore, this petition is liable to be dismissed.

6.Heard both sides and perused the materials available in the records.

7.On perusal of records shows that based on the complaint given by the second respondent, the first respondent registered FIR in Cr.No.45 of 2019 for the offence under Sections 294(b), 353, 506(ii) IPC. According to the petitioner, the police have enquired him, at that time, they assaulted him and also harassed him and thereafter, he was taken to the police station and remanded on the next day. In order to escape from



the said illegal acts done by the police officials, they filed the false complaint as against the petitioner. Since the defacto complainant is police official, without conducting proper investigation, charge sheet was filed as against the petitioner. The contention of the respondent is that when they enquired the petitioner, he abused them in filthy language and also threatened to kill them and then, he ran away from the place of occurrence.

8.On careful perusal of the complaint and final report shows that there is no averments to attract the offence under Section 353 IPC and it is relevant to extract Section 353 IPC, which reads as follows

353. Assault or criminal force to deter public servant from discharge of his duty.—whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person to the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

On careful reading of the above said provision and the complaint as



against the petitioner reveals that there is no allegation made in the complaint and final report to attract the provision 353 IPC. Even according to the complaint, the petitioner only abused in filthy language and also threatened police officials. Mere uttering words would not attract the offence under Section 353 IPC.

9.As far as offence under Section 506(ii) IPC is concerned, there is no allegation except the word that he would kill them. Mere uttering words do not constitute offence under Section 506(ii) IPC, that too as against the police officials. As far as Section 294(b) IPC is concerned, in FIR and final report they mentioned some abusive words and that is also general allegations and further, the occurrence as alleged in FIR and final report is unbelievable, since the petitioner is single person, who enquired by four police officials, at that time, he done the above said acts and the same is unbelievable by an ordinary prudent man. Further, as per FIR, the petitioner after the occurrence, ran away from the place of occurrence. When a person, who abused in filthy language and threatened with dire consequences, the policemen can very well caught the petitioner in the place of occurrence itself. But this conduct of the



police is unbelievable. Therefore, the complaint, FIR and charge sheet as against the petitioner are clear abuse of process of law. In order to prevent the abuse of process of law, it is appropriate to quash the impugned charge sheet.

10.The learned counsel appearing for the petitioner has produced judgement in a case of N.S.Madhanagopal & anr Vs. K.Lalitha reported in 2022 LiveLaw (SC) 844 wherein the Hon'ble Supreme Court held as follows:-

Thus, all that has been averred in the complaint is that the appellant Madhanagopal hurled unparliamentary words towards the complainant. Section 294(b) of the IPC talks about the obscene acts and songs. Section 294 of the IPC as a whole reads thus:

"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."

It is to be noted that the test of obscenity under Section 294(b) of the I.P.C. is whether the tendency of the



matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences. The following passage from the judgment authored by Justice K.K. Mathew (as his Lordship then was) reported in P.T. Chacko v. Nainan (1967 KLT 799) explains as follows:

“The only point argued was that the 1st accused has not committed an offence punishable under Section 294(b) IPC., by uttering the words above-mentioned. The courts below have held that the words uttered were obscene and the utterance caused annoyance to the public. I am not inclined to take this view. In the Queen v. Hicklin, [L.R.] 3 Q.B. 360 at 371 Cockburn C.J. Laid down the test of ‘obscenity’ in these words:

“..... 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 Harlan observed that in order to be ‘obscene’ the matter must “tend to sexually impure thoughts”. I do not think 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".

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 4 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.

11. On careful reading of the above said judgement it is clear that mere utterance of obscene words are not sufficient but there must be a



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further proof to establish that it was to the annoyance of others, which is lacking in the case.

12. In view of the above said judgment and the discussions, this petition is allowed and the impugned charge sheet in C.C.No.307 of 2019 on the file of the Judicial Magistrate No.II, Nagercoil is hereby quashed. Consequently, connected miscellaneous petitions are closed.

23.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

1. The Judicial Magistrate No.II,
Nagercoil.
2. The Sub Inspector of Police,
Kottar Police Station, Kottar,
Kanyakumari District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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P. DHANABAL,J.

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