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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 23/06/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Cr1.OP(MD)No.5569 of 2023

and

Cr1.MP(MD)Nos.4867 and 4870 of 2023

Thangavel : Petitioner/Sole Accused

Vs.

1.State rep. by

The Inspector of Police,
Pattukottai Town Police Station,
Pattukottai,
Thanjavur District.

(In Crime No.153 of 2015) : R1/Complainant

2.Kulanthaisamy

: 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 the charge sheet in CC No.40 of 2020 on the file of the Fast Track Court, Pattukottai, and to quash the same as illegal and pass further order or other orders.

For Petitioner : Mr.K.Sivabalan
for Mrs.C.Bharathi

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

**ORDER**

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This criminal original petition is filed seeking quashment of the case in CC No.40 of 2020 on the file of the Fast Track Court, Pattukottai.

2.The case of the prosecution is that on 23/12/2014 at about 04.30 am, when the de-facto complainant was sleeping in his house, the accused came there with stick, hit the grill gate, abused in filthy language and also criminally intimidated. On the basis of the complaint given by the de-facto complainant, a case in Crime No.153 of 2015 was registered for the offences under sections 147. 294(b) and 506(i) IPC. After completing the formalities of investigation, final report was filed charge sheeting the offences under sections 294(b) and 506(ii) IPC and it was taken cognizance in CC No.110 of 2017 by the Judicial Magistrate, Pattukkottai and subsequently, it was transferred to Fast Track Court, Pattukottai, Thanjavur and assigned a new number as CC No.40 of 2020.



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7. 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."

8. 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



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desires". Mr. Justice Harian 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."

9. 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.

10. With regard to the offence under section 506(ii) IPC, it has been made threat that he will kill the de-facto complainant and his family members.



11. 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."

12. It has been observed by this court in several cases that to constitute an offence under section 506(ii) IPC, a mere threat is not enough and there must be an action in pursuance to the said threat, without which an offence of criminal intimidation is not attracted.

13. Reading of the final report as well as the statement of the witnesses and the de-facto complainant, it is seen that there was only the mere oral and



it was not real one. Also it is seen that it was only an outburst of words expressed by the petitioner. So, the offence under section 506(ii) IPC cannot be said to be attracted.

14. For the reasons stated above, this court is of the considered view that the continuation of the criminal proceedings against the petitioner will be an abuse of process of court and law. On that sole ground, this petition is liable to be allowed.

15. In the result, this criminal original petition is **allowed**. The case in CC No.40 of 2020 on the file of the Fast Track Court, Pattukottai, Thanjavur District, is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

23/06/2023

Index: Yes/No
Internet: Yes/No
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To,

1. The Fast Track Court,
Pattukottai,
Thanjavur District.
2. The Inspector of Police,
Pattukottai Town Police Station,
Pattukottai,
Thanjavur District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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