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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 21/06/2023

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

Cr1.OP(MD)No.8205 of 2023

and

Cr1.MP(MD)Nos.7175 and 7176 of 2023

Sachin : Petitioner/A7

Vs.

1.State rep. by its
The Inspector of Police,
Pazhavor Police Station,
Tirunelveli District.
(Crime No.179 of 2016) : R1/Complainant

2.Koilraj,
GRI 2770,
Pazhavor Police Station,
Pazhavor,
Tirunelveli District : R2/De-facto Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records relating to the charge sheet in CC No.207 of 2018 on the file of the Judicial Magistrate, Vallioor and quash the same as illegal and pass such further or other orders.



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For Petitioner : Mr.S.Sukumar
For Respondents : Mr.R.Suresh Kumar
Government Advocate
(Criminal side)

O R D E R

This criminal original petition has been filed seeking quashment of the case in CC No.207 of 2018 on the file of the Judicial Magistrate, Vallioor.

2.The case of the prosecution in brief:-

On 14/09/2016 at about 09.00 pm, the de-facto complainant party went to the back side of Chidambarapuram Keela Amman kovil street on the eve of car festival. When the Car festival started, the accused persons by standing on the auto, caused public nuisance and also danced. They were warned to follow the High Court order. But in-spite of that, they abused the police people in filthy language and also criminally intimidated. One of the persons, slipped from the auto and sustained injuries. When the villagers warned the above said persons, they went from that place. On the basis of the above said occurrence, a case in Crime No. 176 of 2016 was registered. After completing the investigation process, final report was filed and it was



taken cognizance in CC No.207 of 2018 by the Judicial Magistrate, Vallioor, for the offences under sections 147, 294(b), 353 and 506(i) IPC.

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 of the offences.

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.

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."



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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 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



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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 there was criminal intimidation.

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



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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.

12. For attracting the offence under section 143 IPC, the ingredients of section 141 IPC must be fulfilled.

13. Section 141 IPC reads as under:-

"Section 141. Unlawful assembly.-

An assembly of five or more persons is designated an "unlawful assembly:, if the common object of the persons



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composing that assembly is-

First-To overawe by criminal force, or show of criminal force, or any public servant in the exercise of the lawful power of such public servant; or

Second-To resist the execution of any law, or of any legal process; or

Third.-To commit any mischief or criminal trespass, or other offence; or

Fourth.-By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right: or

Fifth.-By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.-An assembly which



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was not unlawful when it assembled, may subsequently become an unlawful assembly."

14. When we apply the ingredients to the factual position of the case, it is seen that none of the ingredients mentioned in 141 IPC get attracted. So, that cannot be construed as 'unlawful or illegal'.

15. Further it is not the case of the prosecution that the accused have used criminal force to deter public servant from discharging his official duty to attract the offence under section 353 of IPC.

16. For the above stated reasons, this criminal original petition is **allowed**. The case in CC No.207 of 2018 on the file of the Judicial Magistrate, Vallioor is hereby quashed as against the petitioner. Consequently, connected Miscellaneous Petitions are closed.

21/06/2023

Index: Yes/No
Internet: Yes/No

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To,

- 1.The Judicial Magistrate,
Vallioor,
Tirunelveli District.
- 3.The Inspector of Police,
Pazhavor Police Station,
Tirunelveli District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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