



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Date of Reservation : 26/06/2023

Date of Pronouncement : 14/08/2023

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The Hon'ble Mr.Justice **G.ILANGOVAN**

Cr1.OP(MD)No.7398 of 2023

and

Cr1.MP(MD)No.6453 OF 2023

Sri Ram : Petitioner/Sole Accused

Vs.

1.The State,
rep. by Inspector of Police,
Bodinayakkanur Town Police Station,
Theni District. : R1/Complainant

2.Palsam : 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 impugned FIR in Crime No. 416 of 2022 pending on the file of the respondent police, quash the same and pass such further orders.

For Petitioner : Mr.S.Vishnuvaradhan

For 1st Respondent : Mr.R.Suresh Kumar
Government Advocate
(Criminal side)

For 2nd Respondent : No appearance

**O R D E R**

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This criminal original petition has been filed seeking quashment of the case in FIR No.416 of 2022 on the file of the 1st respondent.

2.The case of the prosecution in brief:-

The de-facto complainant lodged a complaint stating that his daughter by name Megalai was married to one Sriram, some seven years prior to the occurrence. They had a child by name Deva Aru. Because of the difference of opinion between the husband and wife, both were living separately for more than three years by way of judicial separation. On 16/11/2022 at about 04.30 pm, he took his grand son namely Deva Arasu. After school hours, he took him to his house. On the way the accused persons forcibly took up the child with him in a two wheeler. When objection was made by him, he was criminally intimidated, abused and kidnapped the minor child. On the basis of the above said complaint, the case was registered.



3. Pending investigation, seeking quashment of the same this petition has been filed by the petitioner who is the father of the victim.

4. Heard both sides.

5. Even though, notice was served upon the second respondent, who is the de-facto complainant he has not chosen to appear either in person or through counsel. So the petitioner was heard.

6. During the course of enquiry, he was directed to present before this court and also present along with the minor victim and child. On enquiry he has stated that because of the difference of opinion between himself and her wife, they were living separately. He frequently visited the school where the child studying. On several times, the victim asked him to take along with him, since the mother married to some other man and he is not willing to be in the custody. So on one occasion, when he visited the child in the hostel, he was crying and wanted to take him along with the petitioner.



7. According to him, he did not kidnap the victim. He has also stated that there was a judicial separation between them since the wife got married to some other man, he was not able to visit the house. So caused him to visit the school where the child is studying to see him. After the above said FIR, he has also filed criminal original petition seeking custody of the child before the District Court, Theni and it is pending and he was also directed to produce the copy of the petition that was filed by him before the District Court, Theni. But the above said petition copy is not furnished. But whatever it may, it is seen that this petitioner is the natural guardian of the child. He is aged about 7 years. It is also stated that he has also filed GWOP before the District Theni. So section 363 IPC prima facie is not attracted and the others namely 294(b) and 506(ii) IPC are also not attracted, since only bald allegation has been made to the effect that he was abused in filthy language and criminally intimidated.

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

"294(b) sings, recites or utters any obscene song, ballad or words, in or near



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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."

9. 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."

10. 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.

11. With regard to the offence under section 506(i) IPC, it has been simply stated that he will kill

12. Section 503 IPC reads as follows:-



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"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."

13.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.

14.So from the facts above stated, it is seen that the de-facto complainant by exaggerating the facts has given a criminal complaint as if this petitioner kidnapped the child, abused in filthy language and



criminally intimidated. So the continuation of the proceedings will clear abuse of process of court. On that score, this petition is liable to be allowed.

15. For the above stated reasons, this criminal original petition is **allowed**. The case in FIR No.416 of 2022 on the file of the 1st respondent is hereby quashed as against the petitioner. Consequently, connected Miscellaneous Petitions are closed.

14/08/2023

Index:Yes/No
Internet:Yes/No

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G.ILANGOVAN, J

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