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Crl.O.P.(MD)No.10830 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 07/11/2023

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

Crl.OP(MD)No.10830 of 2022

and

Crl.MP(MD)No.6806 and 6807 of 2022

1.V.Vijaysundar
2.V.Shanmugavalli
3.V.Kavipradha : Petitioners/A1 to A3

Vs.

1.The State represented by
The Inspector of Police,
Kadaladi Police Station,
Ramanathapuram District.
(Crime No.102 of 2019) : R1/Complainant

2.T.Senthurpandi,
Police Constable,
Kaaladi Police Station,
Mudhukulathur Sub-Division,
Ramanathapuram 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 pertaining to the impugned charge sheet in CC No.10 of 2020 on the file of the District Munsif-cum-Judicial Magistrate, Kadaladi, in First Information Report in Crime No.102 of 2019, dated 04/09/2019 on the file of the Respondent No.1 and quash the same as illegal and pass such further or other orders.



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For Petitioners : Mr.T.Thirumurugan
For 1st Respondent : Mr.M.Vaikkam Karunanithi
Government Advocate
(Criminal side)
For 2nd Respondent : No appearance

O R D E R

This criminal original petition has been filed seeking quashment of the case in CC No.10 of 2020 on the file of the District Munsif-cum-Judicial Magistrate, Kadaladi, in Crime No.102 of 2019 on the file of the 1st respondent police.

2.The case of the prosecution in brief:-

On 04/09/2019 at about 09.00 am, when the 2nd respondent police officials were on search to arrest one accused namely Viswanathan in connection with Crime No.101 of 2019, they found him along with the 1st petitioner near the Union Office, Kadaladi in the Car bearing registration No.TN-65-AZ-1080. When the police team tried to arrest the above said Viswanathan, the 1st petitioner, who is the son of the above said Viswanathan taken the Car to his home. The police also went to the 1st petitioner's home and tried to arrest the said Viswanathan. At that time, all the petitioners restrained the police officials from arresting the said Viswanathan,



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abused and threatened them with dire consequences. Over the above said occurrence, a case in Crime No.102 of 2019 was registered for the offences under sections 294(b), 353 and 506(i) IPC. After completing the formalities of investigation, final report was filed and it was taken cognizance in CC No.10 of 2020 by the District Munsif-cum-Judicial Magistrate, Kadaladi, Ramanathapuram District.

3. Seeking quashment of the same, this petition has been filed by the petitioners 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 as alleged against them.

4. Heard both sides.

5. The learned counsel appearing for the petitioners 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.



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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 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



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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 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 petitioners has been stated by the de-facto complainant. But mere allegation that the petitioners 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 threatened with dire consequences.

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 seen that it is not attracted. A simple abusive word alleged to have been made has been exaggerated as if he was criminally intimidated and abused in filthy language.



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12. Similarly, there is no material to show that the petitioners along with others made assault on the public servant in execution of his duty with an intention to prevent that person from discharging his duty. So section 353 is also not attracted.

13. For the reasons stated above, this criminal original petition stands allowed. The case in CC No.10 of 2020 on the file of the District Munsif-cum-Judicial Magistrate, Kadaladi, is hereby quashed as against the petitioners. Consequently, connected Miscellaneous Petitions are closed.

07/11/2023

Index:Yes/No
Internet:Yes/No

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To,

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



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G.ILANGOVAN, J

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