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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 28/06/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Cr1.OP (MD) No.10553 of 2023

and

Cr1.MP (MD) Nos.8383 and 8385 of 2023

1.D.Sujin

2.J.Manovajothi

: Petitioners/A1 and A2

Vs.

1.The State of Tamil Nadu,
Rep. by the Inspector of Police,
Kotticode Police Station,
Kanyakumari District.
(Crime No.77 of 2022)

: R1/Complainant

2.T.Suresh Kumar

: 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 STC No.836 of 2022 on the file of the Judicial Magistrate No.1, Padmanabapuram and quash the same.

For Petitioners : Mr.C.K.M.Appaji

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

**O R D E R**

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This criminal original petition is filed seeking quashment of the case in STC No.836 of 2022 on the file of the Judicial Magistrate No.1, Padmanabapuram.

2.The case of the prosecution in brief:-

The de-facto complainant lodged a complaint stating that he belongs to a political party and the accused other party. During the Local Body election, he was also contesting and shared the above said election work through his face-book. A defamatory reply was given by A1. He also defamed the female members of the political functionaries. In pursuance of the above said enmity, on 28/03/2022 at about 08.30 pm, they again made life threat through the social media. He enquired the above said threat. But against life threat was made. On the basis of the complaint, a case in Crime No.77 of 2022 was registered for the offences under sections 294(b) and 506(i) IPC. After completing the formalities of investigation, final report was filed and it was taken cognizance in STC No.836 of 2022 by the Judicial Magistrate No.1, Padmanabapuram.



3. Seeking quashment of the same, this petition has been filed stating that none of the allegations made either in the FIR or in the final report attract any of the ingredients of the offences alleged against the petitioners.

4. Heard both sides.

5. As mentioned in the preamble portion, the factual background is that the petitioners were alleged to have made life threat and abuse alleged to have been taken place.

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 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 the utterance would constitute an offence punishable under S.294(b) IPC."



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8. So we apply the above said statement of law, I am of the considered view that not even the abusive 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 is not satisfied 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. 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



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such threat, commits criminal intimidation."

10.It has been uniformly held that for attracting section 506(ii IPC, the alleged threat could have caused some fear in the mind of the complainant to his life.

11.Even reading of the final report does not indicate the abusive words alleged to have been used by the accused persons. It has been simply stated that they defamed the female members of the political party as well as the de-facto complainant. The specific word alleged to have been used by the petitioners is also not stated. But in the final report, it has been stated that on 28/03/2022 at about 08.30 pm, the accused came near the house of the de-facto complainant, they abused him in filthy language. But in the complaint, nowhere it has been stated that on the particular day, the above said occurrence said to have been taken place. It has been simply stated in the complaint that on 28/03/2022 at about 08.30 pm, they posted the defamatory messages in the face-book.



12.The entire factual circumstances clearly shows that a trivial issue has been given exaggeration, as it is life threat and abusive.

13.For the above stated reasons, this criminal original petition is **allowed**. The case inSTC No.836 of 2022 on the file of the Judicial Magistrate No.1, Padamabapuram is hereby quashed as against the petitioners. Consequently, connected Miscellaneous Petitions are closed.

28/06/2023

Index:Yes/No
Internet:Yes/No
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To.

- 1.The Judicial Magistrate No.1,
Padmanabapuram.
- 2.The Inspector of Police,
Kotticode Police Station,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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