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Crl.O.P.(MD)No.11428 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 04/12/2023

CORAM

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

Crl.OP(MD)No.11428 of 2023

and

Crl.MP(MD)No.9013 of 2023

1.Suresh

2.Anbarasu

: Petitioners/A1 and A2

Vs.

1.The State represented by
The Inspector of Police,
Arimalam Police Station,
Pudukkottai District.
(Crime No.168 of 2022)

: R1/Complainant

2.Mr.Saravanan

: R2/De-facto Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the entire records pertaining to the charge sheet filed in CC No.254 of 2022 on the file of the District Munsif-cum-Judicial Magistrate Court, Thirumayam, Pudukottai District and quash the same as illegal and pass such further or other orders.

For Petitioners : Mr.R.Karunanidhi

For 1st Respondent : Mr.M.Vaikkam Karunanithi
Government Advocate
(Criminal side)



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O R D E R

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This criminal original petition has been filed seeking quashment of the case in CC No.254 of 2022 on the file of the District Munsif-cum-Judicial Magistrate, Thirumayam, Pudukottai District.

2.The case of the prosecution is that the de-facto complainant lodged a complaint stating that petitioners alleged to have encroached a common pathway. When the same was questioned, on 25/09/2022, they abused the de-facto complainant in filthy language and also threatened him with aruval. On the basis of the complaint given by the de-facto complainant, a case in Crime No.168 of 2022 was registered for the offences under sections 294(b), 341 and 506(ii) IPC. After completing the investigation, final report was filed and it was taken cognizance in CC No.254 of 2022 by the District Munsif-cum-Judicial Magistrate, Thirumayam, Pudukottai District.

3.Seeking quashment of the same, this petition is filed by the petitioners stating that none of the allegations mentioned in the FIR or in the final report attract any of the ingredients alleged against them.

4.Heard both sides.



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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.

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



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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."

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.



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9. Section 341 IPC reads as under:-

"341. Punishment for wrongful restrain. -Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees or with both."

10. Similarly, section 341 IPC is not attracted. There is no allegation to the effect that they prevented the public from proceeding in a particular way.

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

12. 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



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is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation."

13.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.

14.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 petitioners. So, the offence under section 506(ii) IPC cannot be said to be attracted.

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



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16.In the result, this criminal original petition is **allowed**. The case in CC No.254 of 2022 on the file of the District Munsif-cum-Judicial Magistrate, Thirumayam, Pudukkottai District is hereby quashed as against the petitioners. Consequently, connected Miscellaneous Petition is closed.

04/12/2023

Index:Yes/No
Internet:Yes/No

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To,

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



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G.ILANGOVAN, J

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