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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 20/04/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

CrI.OP (MD) No.16809 of 2022

and

CrI.MP (MD) Nos.11244 and 11245 of 2022

Navbiya : Petitioner/A3

Vs.

1.State of Tamil Nadu

Through the Sub Inspector of Police,

Kottar, Nagercoil,

Kanyakumari District.

: R1/Complainant

2.Hameed Farook

: R2/De-facto Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in STC No.1370 of 2022 on the file of the Judicial Magistrate No.2, Nagercoil and quash the same as against the petitioner.

For Petitioner : Mr.K.N.Thampi

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

For 2nd Respondent : Mr.S.Karthikeyan

**O R D E R**

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This criminal original petition is filed seeking quashment of the case in STC No.1370 of 2022 on the file of the Judicial Magistrate No.2, Nagercoil.

2.The case of the prosecution in brief:-

The marriage between the de-facto complainant and A1 herein was performed some 9 years prior to the occurrence. They were having a children. Later, matrimonial dispute arose between them. So, A1 herein lodged a complaint with the All Women Police Station, Nagercoil. Over which, a case in Crime No.24 of 2020 was registered for the offences under sections 498(A) and 406 IPC and Sections 4 and 6 of the Dowry Prohibition Act, 1961, against the de-facto complainant herein and his family members. All of them were released on bail by the trial court. Because of the above said enmity, A1 to A3 herein went to the house of the de-facto complainant, abused him in filthy language and insulted. On hearing the above said noise, the father of the de-facto complainant came out of the house and made enquiry. He was also assaulted by A1 and A2. A3 caused assault to the



de-facto complainant, due to it, his hands got fractured. They have also criminally intimidated the de-facto complainant. Over the above said occurrence, a case in Crime No.885 of 2021 was registered for the offences under section 294(b), 323 and 506(i) IPC. After completing the formalities of investigation, final report was filed and it was taken cognizance in STC No.1370 of 2022 by the Judicial Magistrate No.2, Nagercoil.

3. Seeking quashment of the same, this petitioner, who is arrayed as A3 has filed this petition stating that after the marriage, she is living away from the matrimonial house of the de-facto complainant and now residing and living with her family in Ernakulam, Kerala State; Absolutely, there is no possibility and probability for her to be present in the place of occurrence on the particular date and causing assault to the de-facto complainant.

4. Heard both sides.

5. It is a case of matrimonial dispute between the de-facto complainant and wife, who is A1 herein.



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6. Reading of the grounds of the petition shows that several litigations are pending between these two people. Separate living is also admitted by the de-facto complainant. According to him, on the particular date of occurrence, all the accused persons came to his parental home, abused him in filthy language and caused assault. So far as this petitioner is concerned, it has been stated that she also joined along with A1 and A2 and caused simple injuries to the de-facto complainant. Because of the matrimonial issue between the husband and wife, on the basis of the complaint given by A1, a case in Crime No.24 of 2020 was registered against the 2nd respondent namely Hameed Farooq and his parents namely Peer Mohammed and Saleema. After completing the investigation, final report was also filed, which was also taken cognizance in CC No.77 of 2021 by the trial court namely the Additional Mahila Court, (Magisterial Level), Nagercoil. The husband namely Hameed Farooq and filed an objection petition in GWOP No.217 of 2019 before the Family Court, Kanyakumari District @ Nagercoil, seeking visitation right to the child. That case was under trial and enquiry. On 08/11/2021 at about 02.30 pm, when the husband came out of the Family Court, so also



his Advocate; at that time, A1 and A3 abused the second respondent herein namely Hameed Farook and his Advocate, assaulted them. A1 caused assault to Hameed Farook and his Advocate, A2 abused in filthy language and criminally intimidated and this petitioner alleged to have abused in filthy language. On the basis of the above said occurrence, the present FIR was registered. After completing the investigation, final report has been filed charging this petitioner for the offence under section 294(b) IPC. Seeking quashment of the same, this petition has been filed.

7.The first occurrence said to have been taken place, on 28/10/2020, over which, a case in Crime No. 590 of 2020 was registered against the husband, father-in-law and mother-in-law, it was also under trial. Another occurrence said to have taken place, on 08/03/2021, on the basis of the complaint given by the wife. Over which, a case in Crime No.590 of 2020 was registered and final report was also filed before the Additional Mahila Court, Nagercoil. This is the second FIR.



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8. Reading of the above said cases shows that continuous trouble occurred between the husband and wife and in-laws, over which, repeated complaints have been given by the wife against the husband and in-laws. So the sequence of events shows that a serious matrimonial issue exists between the husband and wife and no conclusion or compromise has been reached between them. Now the present occurrence said to have been taken place when the petitioner alleged to have travelled from Nagercoil to the trial court and caused abusive language against the second respondent herein and his Advocate. The learned counsel appearing for the petitioner would submit that absolutely, there is no possibility or probability for her to be present in the court and caused abusive language against the Advocate or the second respondent herein. So the improbable nature of allegation, which has been advanced by the petitioner deserves to be accepted. Even, if we take that the occurrence is true, the allegations against this petitioner is that she made abusive and insulting words against the 2nd respondent and his parents.



9. Now coming to the legal ground of section 294(b) IPC, 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 tendency to corrupt by arousing lustful desires". Mr. Justice Harlan 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."



10. So 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 is not satisfied only to attract the offence under section 294 (b) IPC.

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

"294. Obscene acts and songs-Whoever, to the annoyance of others-

(a).... , or

(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."

12. Even reading of this would show that the allegations also not attracted. It appears that a trivial issue or words uttered, who alleged to have been made by the petitioner has been exaggerated and a police



complaint has been lodged, the matter does not require the continuation of the criminal process.

13. When when reading of the statement of law of the Hon'ble Supreme Court in **Madhanagopal's** case, I am of the considered view that the ingredients of 294(b) IPC are not attracted against this petitioner. Even though, number of judgments have been cited by the petitioner, this matter can be decided in the light of the judgment of the Hon'ble Supreme Court in **Madhanagopal's** case.

14. In the result, this criminal original petition is **allowed**. The proceedings in STC No.1370 of 2022 on the file of the Judicial Magistrate No.2, Nagercoil, is hereby quashed as against this petitioner/A3. Consequently, connected Miscellaneous Petitions are closed.

20/04/2023

Index:Yes/No
Internet:Yes/No
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WEB COPY To,

- 1.The Judicial Magistrate No.2,
Nagercoil.
- 2.The Sub Inspector of Police,
Kottar, Nagercoil,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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