



Crl.O.P.(MD)No.15814 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 20/11/2023

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

Crl.OP(MD)No.15814 of 2023

and

Crl.MP(MD)Nos.12574 and 12575 of 2023

Perumal : Petitioner/Accused

Vs.

1.The State of Tamil Nadu
rep. by the Inspector of Police,
Alwarthirunagiri Police Station,
Thoothukudi District.
(Crime No.61 of 2018) : R1/Complainant

2.Veeramani : 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 proceedings in SC No.160 of 2019 on the file of the Sub Judge, Srivaikundam and quash the same in so far as the petitioner is concerned and pass such further or other orders.

For Petitioners : Mr.S.Sarvagan Prabhu

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

O R D E R

This criminal original petition has been filed seeking quashment of the case in SC No.160 of 2019 on the file of the Sub Judge, Srivaikundam.



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2.The case of the prosecution is that the de-facto complainant lodged a complaint stating that on 22/04/2018 at about 08.00 pm, he was standing near Union Office of Thenthiruperai. At that time, the accused person came there, abused in filthy language, kicked on his hip and caused assault with legs. He also tried to assault with aruval. But he escaped from that attack. When the neighbours gathered, the accused person fled away from that place after making criminal intimidation. On the basis of the complaint given by the de-facto complainant, a case in Crime No.61 of 2018 was registered for the offences under sections 294(b), 323, 307 and 506(ii) IPC. After completing the investigation, final report was filed and it was taken cognizance in SC No.160 of 2019 by the Sub Judge, Srivaikundam.

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

4.Heard both sides. Even though notice was served upon the second respondent/de-facto complainant namely Veeramani, he has not chosen to appear, so the petitioner was heard.



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5.As stated in the preamble portion, it has been stated by the de-facto complainant that he was also criminally intimidated and tried to be killed. But the learned Government Advocate (Criminal side) would fairly admit that there was no injury to the de-facto complainant and he has not taken any treatment also.

6.It is seen that there was issue between the parties over the land. The accused person alleged to have demanded sale of the property. When that was refused by the de-facto complainant, trouble has arisen between them. *Prima facie* it indicates that there was some property issue between the party.

7.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."

8.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."

9.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



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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.

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

11.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."



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12.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.

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

14.Section 323 IPC read as under:-

*"Section 323.**Punishment for voluntarily causing hurt.** Whoever, except in the case provided for by section 334, voluntarily causes hurt, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to one thousand rupees, or with both."*



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15. Section 307 IPC reads as follows:-

"307. Attempt to murder.—Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life convicts.—When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death."

16. As stated by the learned Government Advocate (Criminal side), there was no injury. So *prima facie*, sections 323 and 307 IPC are not attracted.

17. For the reasons stated above, this court is of the considered view that the continuation of the criminal proceedings against the petitioner 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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18.In the result, this criminal original petition is **allowed**. The case in SC No.160 of 2019 on the file of the Sub Judge, Srivaikundam is hereby quashed as against the petitioner. Consequently, connected Miscellaneous Petitions are closed.

20/11/2023

Index:Yes/No
Internet:Yes/No

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To,

- 1.The Sub Judge,
Srivaikundram.
- 2.The Inspector of Police,
Alwarthirunagari Police Station,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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