



WEB COPY



Crl.O.P.(MD)No.17402 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12/12/2023

CORAM

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

Crl.OP(MD)No.17402 of 2023

and

Crl.MP(MD)Nos.13814 and 13817 of 2023

1.Navarajan
2.Prasanthkumar : Petitioners/A2 and A3

Vs.

1.State Represented by
Its the Inspector of Police,
Virudhunagar Bazaar Police Station,
Virudhunagar District,
Virudhunagar.
(Crime No.4 of 2023) : R1/Complainant

2.Mr.Murugavel : 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 Final Report in STC No. 1141 of 2023 on the file of the Judicial Magistrate No.1, Virudhunagar District in Crime No.4 of 2023 on the file of the 1st respondent, dated 13/01/2023 and quash the same as illegal as against the petitioners alone and pass such further or other orders.

For Petitioners : M/s.T.Seeni Syed Amma
for M/s.Lajapathi Roy and Associates

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

For 2nd Respondent : Mr.I.Pinaygash
(Legal Aid Counsel)



CrI.O.P.(MD)No.17402 of 2023

O R D E R

WEB COPY

This criminal original petition has been filed seeking quashment of the case in STC No.1141 of 2023 on the file of the Judicial Magistrate No.1, Virudhunagar District, in Crime No.4 of 2023 on the file of the 1st respondent.

2.The case of the prosecution is brief:-

The de-facto complainant is residing in the opposite of the oil mill of the accused persons. There exists dispute with regard to the parking of the vehicle by the accused persons in front of the house of the de-facto complainant. In pursuance of which, on 10/01/2023, A1 abused the de-facto complainant, made life threat to him at the instigation of A2 and A3. Over the above said occurrence, a case in Crime No.4 of 2023 for the offences under sections 294(b) and 506(i) of IPC has been registered against the accused persons. After completing the investigation, final report was filed and it was taken cognizance in STC No.1141 of 2023 by the Judicial Magistrate No.I, Virudhunagar, charge sheeting the accused persons for the offences punishable under sections 294(b), 506(i) and 109 of IPC.



CrI.O.P.(MD)No.17402 of 2023

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 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.

6. Section 294(b) of 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."

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



Crl.O.P.(MD)No.17402 of 2023

allegation that the petitioners used the abusive word does not satisfy to attract the offence under section 294(b) of 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) of IPC are not attracted.

9.For attracting the offence under section 506(i) IPC, the ingredients of section 503 of IPC must be fulfilled.

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 allegations mentioned in the final report to the ingredients, it is seen that it is not attracted. A simple abusive word alleged to have been exaggerated as if he was criminally intimidated.

12. Section 109 of IPC reads as under:-

"109. Punishment of abetment if the act abetted is committed in consequence of abetment and where no express provision is made for its punishment.-

Whoever abets any offence shall, if the act abetted is committed in consequence of the abetment, and no express provision is made by this Code for the punishment of such abetment, be punished with the punishment provided for the offence.

Explanation.—An act or offence is said to be committed in consequence of abetment, when it is committed in consequence of the instigation, or in pursuance of the conspiracy, or with the aid which constitutes the abetment."

13. For constituting offence of abetment, intentional and active participation by the abettor is necessary. But perusal of the final report shows that no specific averment is made to attract the offence under section 109



Crl.O.P.(MD)No.17402 of 2023

of IPC.

14.For the reasons stated above, this criminal original petition stands **allowed**. The case in STC No.1141 of 2023 on the file of the Judicial Magistrate No.1, Virudhunagar is hereby quashed as against the petitioners. Consequently, connected Miscellaneous Petitions are closed.

12/12/2023

Index:Yes/No
Internet:Yes/No
er

To,

- 1.The Judicial Magistrate No.I,
Virudhunagar.
- 2.The Inspector of Police,
Virudhunagar Bazaar Police Station,
Virudhunagar district.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Cr1.O.P.(MD)No.17402 of 2023

G.ILANGOVAN, J

er

Cr1.OP (MD) No.17402 of 2023

12/12/2023