



Crl.O.P.(MD)No.18011 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 27.04.2023

Delivered on : 22.06.2023

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.18011 of 2019

and

Crl.M.P.(MD)Nos.10588 and 10589 of 2019

1.Thiruppathi

2.Pandian

3.Madhavan

4.Karthick

: Petitioners/ A1 to A4

Vs.

1.State rep.by the Inspector of Police,
B-6, Jaihindpuram (L & O) Police Station,
Madurai City.
Crime No.570/2017.

: Respondent/Complainant

2.Sukumar

: Respondents /Defacto
Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to C.C.No.16 of 2019, pending on the file of the learned Judicial Magistrate No.IV, Madurai and quash the same.



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For Petitioner : Mr.K.Manavalan
For R1 : Mr.SS.Madhavan,
Government Advocate (Criminal Side)
For R2 : Mr.S.Prabha,
for Mr.P.Balasubraanian

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders, to call for the records relating to C.C.No.16 of 2019, pending on the file of the learned Judicial Magistrate No.IV, Madurai and quash the same.

2. The petitioners are the accused 1 to 4 in C.C.No.16 of 2019, pending on the file of the learned Judicial Magistrate No.IV, Madurai. The second respondent/defacto complainant has filed a petition under Section 156(3) Cr.P.C before the jurisdictional Magistrate Court and as per the order passed in Cr.M.P.No.1044 of 2017, by the said Court, FIR came to be registered in Crime No.570 of 2017, dated 11.04.2017 against the petitioners herein for the alleged offences under Sections 294(b), 352, 379 and 420 IPC. The first respondent, after completing the



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investigation, has laid the final report under Section 173 Cr.P.C against the petitioners herein for the alleged offences under Sections 294(b), 323 and 352 IPC and the same was taken on file in C.C.No.16 of 2019 and the same is pending on the file of the Judicial Magistrate No.IV, Madurai.

3. The case of the second respondent/defacto complainant, as evident from the FIR is that the first petitioner has borrowed a sum of Rs.3,72,000/- from the defacto complainant on various occasions from June 2016; that when the defacto complainant demanded the loan amount, the first petitioner had refused to return the amount; that the defacto complainant has then approached the second petitioner/brother of the first petitioner, who is the Government Doctor, on 09.10.2016 and informed about the loan and requested him to direct his brother to return the money; that on 09.10.2016 at about 11.00 pm, the petitioners 1 and 2 along with petitioners 3 and 4 came to the residence of the defacto complainant in drunken mode and abused him in filthy language and assaulted the defacto complainant; that the fourth petitioner had snatched the chain of the defacto complainant; that the petitioners had also



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6. It is the further case of the defacto complainant that he has then preferred a complaint before the Commissioner of Police, Madurai City and since there was no action, he was constrained to approach the Judicial Magistrate Court and filed a petition under Section 156(3) Cr.P.C and as per direction of the learned Judicial Magistrate, the present FIR came to be registered.

7. The learned counsel appearing for the petitioners/accused would submit that there was a money transaction dispute between the defacto complainant and the first petitioner as the defacto complainant had demanded exorbitant interest; that the defacto complainant has lodged a complaint on 16.10.2016 alleging that the first petitioner has to pay Rs.3,72,000/- to him; that the first petitioner's brother Madhavan and Karthi (3rd and 4th petitioners) had quarreled with him and threatened him not to demand any amount from their brother Thiruppathi and that therefore, necessary action may be taken against them; that on the basis of the said complaint, enquiry was conducted and at that time the defacto complainant has given a statement before the first respondent Police that



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he came to know that a petty case was registered against the petitioners 3 and 4 and he would not raise any other issue directly or indirectly against them and that no further action is necessary with respect to his complaint already lodged; that the first petitioner has also given a statement that he would settle the money issue and the he would not raise any issue with the defacto complainant directly or indirectly; that after the said enquiry, the complaint of the second respondent was ordered to be closed and that the defacto complainant, by suppressing the above, has sent a complaint to the Commissioner of Police and filed a petition before the Magistrate Court as if the occurrence was held on 09.10.2016 and thereby suppressed the earlier lodging of the complaint on 16.10.2016 and closing of the same.

8. He would further submit that the first respondent after conducting investigation, has deleted the offence under Section 379 and 420 IPC and laid the final report for the offence under Section 294(b), 352 and 323 IPC, that no such incident was occurred on 09.10.2016 as alleged by the second respondent; that there is inordinate delay in lodging the complaint for the alleged incident occurred on 09.10.2016;



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that necessary ingredients to attract the offence under Sections 294(b), 352 and 323 IPC are not spelt out against the petitioners and that therefore, the charge sheet in C.C.No.16 of 2019 is liable to be quashed.

9. The petitioners have produced the copy of the first complaint given by the defacto complainant on 16.10.2016 and the copies of the statement given by the defacto complainant and the first petitioner before the first respondent Police on 16.10.2016 and it is clearly evident from the above that the second respondent has given complaint only against the petitioners 3 and 4 and that too for quarrelling with him and directing him not to demand any amount from their brother.

10. As rightly pointed out by the learned counsel for the petitioners, the second respondent has nowhere whispered about the incident allegedly occurred on 09.10.2016 in the complaint, dated 16.10.2016 and there is absolutely no explanation from the defacto complainant with regard to the same.



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11. It is the specific contention of the petitioners that on the basis of the earlier complaint, dated 16.10.2016, the first respondent Police registered a case under Section 75 of MCP Act and got the statements from both parties and that subsequently, the same was also closed by the first respondent Police. Neither the first respondent nor the second respondent has disputed the above registration of the case under Section 75 of MCP Act and closure of the same subsequently.

12. As rightly contended by the learned counsel for the petitioners, the second respondent, after closure of his complaint, dated 16.10.2016, preferred a complaint to the Commissioner of Police, Madurai City on 04.01.2017 and subsequently, he filed the petition under Section 156(3) Cr.P.C before the jurisdictional Court and got a direction in Cr.M.P. No.1044 of 2017 and only on that basis, the present FIR came to be registered on 11.04.2017.

13. Considering the materials available on record, it is clearly evident that the second respondent, after closure of the complaint, which was registered under Section 75 of MCP Act, has lodged the present



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complaint after the lapse of six months by changing the very occurrence itself by implicating the petitioners 1 and 2 and also added as if his wife and father were also assaulted in that incident.

14. Even assuming for argument sake that the incident projected by the second respondent is true, let us consider as to whether there are *prima facie* materials to prove the necessary ingredients so as to attract the offence under Sections 294(b), 323 and 352 IPC.

15. Regarding the offence under Section 323 IPC, as rightly pointed out by the learned counsel for the petitioners, the said offence does not find place in the FIR, but in the alteration report, it has been stated that since the defacto complainant had informed that he suffered dumb injuries and received country treatment, the offence under Section 323 IPC was added. Admittedly, absolutely there is no averments or materials to show that the defacto complainant had suffered dumb injuries and received country treatment.



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16. Now turning to the offence under Section 294(b) IPC, according to the prosecution, the petitioners had abused the complainant in filthy language. The Kerala High Court in **Latheef Vs. State of Kerala** reported in **2014 (2) KLT 987** relying on the earlier judgements of Kerala High Court has held that abusive words or humiliating words or defamatory words will not as such amount to obscenity as envisaged in Section 292 and 294 (b) IPC and that to make it punishable under Section 294(b), the alleged words must be in a sense lascivious, or it must be appeal to the prurient interest, or will deprave and corrupt persons.

17. As rightly contended by the learned counsel for the petitioners, even assuming for argument sake that the petitioners had uttered the words as alleged by the prosecution, the same will not satisfy the definition of obscenity and as such no offence under Section 294(b) is made out.

18. Now turning to the offence under Section 352 IPC, it is necessary to refer the Section;



“ 352. *Punishment for assault or criminal force otherwise than on grave provocation.—Whoever assaults or uses criminal force to any person otherwise than on grave and sudden provocation given by that person, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.*”

19. It is necessary to establish, for proving the offence under Section 352 IPC that the accused made a gesture or preparation to use criminal force, that he knew that it was likely that such gesture or preparation to use criminal force would cause apprehension that criminal force would be used by him against the victim and that there was no grave or sudden provocation from the side of the victim.

20. A cursory perusal of the complaint and the final report and other materials, the ingredients required to attract the offence under Section 352 IPC, are completely absent.

21. Considering the above, this Court is of the clear view that there are absolutely no *prima facie* materials on record to proceed against the



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accused and the very continuation of the above proceedings would only amount to an abuse of process of law. Hence, this Court concludes that the proceedings in C.C.No.16 of 2019, pending on the file of the learned Judicial Magistrate No.IV, Madurai, is liable to be quashed.

22. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.16 of 2019, pending on the file of the learned Judicial Magistrate No.IV, Madurai, is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

22.06.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
das

To

- 1.The Inspector of Police,
B-6, Jaihindpuram (L & O) Police Station,
Madurai City.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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K.MURALI SHANKAR,J.

das

Pre-delivery order made in
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and
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Dated: 22.06.2023