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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 21/04/2023

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The Hon'ble Mr.Justice **G.ILANGO VAN**

Cr1.OP (MD) No.22139 of 2022
and
Cr1.MP (MD) Nos.15623 and 15624 of 2022

J.Amal Michael : Petitioner/Sole Accused

Vs.

1.The State through
The Inspector of Police,
Thalaiyuthu Police Station,
Tirunelveli District. : R1/Complainant

2.Ramalakshmi : 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 case in CC No.1988 of 2022 on the file of the Judicial Magistrate No.III, Tirunelveli and quash the same.

For Petitioner : Mr.C.Vakeeswaran

For 1st Respondent : Mr.S.Manikandan
Government Advocate
(Criminal side)

For 2nd Respondent : No appearance



O R D E R

This criminal original petition is filed seeking quashment of the case in CC No.1988 of 2022 on the file of the Judicial Magistrate No.III, Tirunelveli.

2.The case of the prosecution in brief:-

The de-facto complainant lodged a complaint stating that on 26/07/2022 at about 03.00 pm, when she was walking along the road, the accused, who came there in a two wheeler, abused her in filthy language and tried to misbehave with her. On the basis of the complaint, a case was registered in Crime No.185 of 2022, on 04/08/2022 for the offences under section 294 IPC and section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2022. After completing the investigation, final report was filed and it was taken cognizance in CC No.1988 of 2022 by the Judicial Magistrate No.III, Tirunelveli.

3. Seeking quashment of the same, this petition has been filed on the ground that only bald allegations have been made not only in the complaint, but also in the final report and the allegations are not attracting to



any of the ingredients of the offences punishable under section 294(b) IPC and section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002.

4. Even though, notice was served upon the second respondent, she has not chosen to appear either in person or through Advocate. So the petitioner was heard.

5. As mentioned above, only a short point has been raised by the petitioner. Reading of the complaint does not indicate anything about the alleged abusive language or words alleged to have been used by the petitioner.

6. The learned counsel appearing for the petitioner would rely upon the judgment of the Hon'ble Supreme Court in the case of **N.S. Madhanagopal and another Vs. K. Lalitha (2022 LiveLaw (SC) 844)**. The statement of law on this issue, has been clarified by the Hon'ble Supreme Court. Let me extract the statement 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



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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."

7.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 allegation that the petitioner used the abusive word does not sufficient 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.

8.The next offence that has been registered is under section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2022. But in the facts and circumstances of this case, in the light of the allegation made against this petitioner section 4 of the Tamil Nadu Prohibition of Harassment of Woman Act, 1998 also does not attract. So, I am of the considered view that the continuation of proceedings against this petitioner will amount to abuse of process of court and law.

9.In view of the above facts, this criminal original petition is **allowed**. The case in CC No.1988 of 2022 on the file of the Judicial Magistrate No.III, Tirunelveli is hereby quashed against the petitioner. Consequently, connected Miscellaneous Petitions are closed.

21/04/2023

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

- 1.The Judicial Magistrate No.III,
Tirunelveli.
- 2.The Inspector of Police,
Thalaiyuthu Police Station,
Tirunelveli 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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