



Crl.O.P.(MD)No.22427 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 14/12/2023

CORAM

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

Crl.OP(MD)No.22427 of 2023

and

Crl.MP(MD)Nos.17528 and 17530 of 2023

1.Mahesh
2.Tamilmani
3.Ramar

: Petitioners/A2, A4 and A5

Vs.

1.The State Represented by
The Inspector of Police,
Vasudevanallur Police Station,
Tenkasi District.
(In Crime No.30 of 2019) : R1/Complainant

2.Mr.Venkadesh,
Special Tahsildar (Land Acquisition),
National Highways Department,
Sivagiri Part-IV,
Thenkasi District. : R2/De-facto Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the entire records pertaining to the impugned final report filed in CC No.177 of 2020 on the file of the Additional District Munsif-cum-Judicial Magistrate Court, Sivagiri, in connection with Crime No.30 of 2019 on the file of the respondent police station and to quash the same as against the petitioners are concerned and pass such further or other orders.

For Petitioners : Mr.R.Karunanidhi

For Respondents : Mr.M.Vaikkam Karunanithi
Government Advocate
(Criminal side)



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O R D E R

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This criminal original petition has been filed seeking quashment of the case in CC No.177 of 2020 on the file of the Additional District Munsif-cum-Judicial Magistrate, Sivagiri.

2.The case of the prosecution in brief:-

The de-facto complainant, who is the Special Tahsildar (Land Acquisition) has lodged a complaint stating that on 26/12/2018, when he was on duty, the petitioners and others threatened his office officials not to survey the land for forming of National Highways Four lane and prevented the officials from executing their work. Based upon which, a case in Crime No.30 of 2019 was registered for the offences under sections 294(b), 353 and 147 IPC. After completing the process of investigation, final report has been filed and it was taken on file in CC No.177 of 2020 by the trial court.

3. Seeking quashment of the same, this petition has been filed by the petitioners on the ground that none of the allegations mentioned either in the FIR or final report attract any of the ingredients of the offences alleged against them.



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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) 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 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.



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".....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 a single obscene word alleged to have been spoken by the petitioners has



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been stated by the de-facto complainant. But mere allegation that the petitioners 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.

9. Similarly, it is not the case of the prosecution that the accused persons assembled to commit any offence. When the prosecution prima facie failed to establish that the assembly of five or more persons with a common object to commit any offence or any of the circumstances shown under Section 147 IPC, mere assembly of more than five persons cannot be construed that there is an unlawful assembly. Therefore, when the people gathered to show the protest in a democratic way, such a protest, in the absence of any ingredients of offence under Section 147 cannot be construed as unlawful assembly.

10. Similarly, there is no material to show that the petitioners along with others made assault on the public servant in the execution of his duty with an intention to prevent that person from discharging his duty. So section 353 IPC is also not attracted.



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11.For the reasons stated above, this criminal original petition stands allowed. The case in CC No.177 of 2020 on the file of the Additional District Munsif-cum-Judicial Magistrate, Sivagiri is hereby quashed as against the petitioners. Consequently, connected Miscellaneous Petitions are closed.

14/12/2023

Index:Yes/No

Internet:Yes/No

er/tm

To,

- 1.The Additional District Munsif-cum-Judicial Magistrate, Sivagiri.
- 2.The Inspector of Police,
Sivagiri Police Station,
Tenkasi 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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