



Crl.O.P.No.8139 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Reserved on : 22.07.2024

Pronounced on: 26.07.2024

Coram:

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.8139 of 2024
& Crl.M.P.Nos.5919 & 5920 of 2024

T.G.Neelan

.... Petitioner/Accused
/versus/

1. State Rep. by,
The Inspector of Police,
E 3 Minjur Police Station,
Tiruvallur District.

....Respondent/Complainant

2. Mrs.Lakshmi.

....Respondent/Defacto Complainant

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records relating to the Charge Sheet in SC.No.206 of 2023 dated 13.12.2022 on the file of the Principal District and Sessions Judge, Tiruvallur and quash the same.

For Petitioner : Mr.G.Saravana Kumar

For R1 : Mr.S.Udaya Kumar,
Government Advocate (Crl.Side).

For R2 : Mr.S.Angamuthu.



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ORDER

On the complaint given by one Lakshmi, the petitioner herein is facing trial in S.C.No.206 of 2023 on the file of Principal District and Sessions Court, Tiruvallur for offences punishable under Sections 294(b), 506(1) of IPC and Sections 3(1)(s), 3(1)(m) and 3(1)(n) of SC and ST (PoA) Act.

2. The substance of the charges against this petitioner is that, on 26/11/2021 when the petitioner called the complainant over phone, the brother of the complainant attended the call. Her brother put the phone on speaker mode and gave it to her. The petitioner abused the complainant in filthy language and called her by her caste name and intimidated her.

3. The petitioner who is the sole accused has filed petition to quash the above case on the ground that the prosecution has failed to collect the cellphone of the complainant in which she alleged to have recorded the objectionable speech. The allegation of abuse and calling her by caste name is purely imaginary and no evidence for that allegation. The transcript of the phone conversation alleged to have taken place between the accused and the



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complainant's brother is not admissible in evidence in the absence of

Certificate under Section 65-B of the Evidence Act from the custodian of the electronic device. The claim of the complainant that she lost her cell phone in the field is to avoid filing affidavit under Section 65 B of the Evidence Act and her claim that her brother put the phone on Speaker mode and recorded the conversation is totally unbelievable.

4. The Learned Counsel for the petitioner/accused submitted that, even according to the F.I.R., the abusive language was spoken by the accused only over phone. It was not in public view or in public place. The ingredients to attract prosecution under Section 294(b) and 506(1) I.P.C not present in this case. The alleged utterance of objectionable words and calling her by caste name was also not in public view or in the presence of public. The alleged threat over phone also will not attract offence of criminal intimidation in the absence of imminent threat.

5. The complaint is lodged to wreck vengeance and to silence the petitioner who had been opposing the complainant for aiding the encroachers of water bodies misusing her power as President of the Village Panchayat. The



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petitioner sent representation to the District Collector, Thiruvallur to take action against the encroacher in S.No.117/1 of Devathanam Village and same was acted upon by the Higher Authorities. Since then the complainant was inimical towards the petitioner. Hence in collusion with the encroacher, to protect the encroacher, she had given the false complaint which is the subject matter of S.C.No.206/2023.

6. On notice, the 2nd respondent/complainant appeared through a Counsel and filed a detailed counter, wherein it is stated that there is an audio record of the abusive conversation and same been handed over to the police at the time of investigation. To prove the content of the audio recording, L.W.2 Poonniyan @ Kutty, the brother of the complainant been arrayed as prosecution witness. The audio record been examined during the investigation and transcribed by L.W-11 A.M.Prakash, a Police personnel attached to the first respondent Police Station. The Nodal Officer of the cellphone Service Provider is L.W-14, he speaks about the call details from the accused phone to the complainant's phone. Initially, the case was registered only for I.P.C offences. On hearing the conversation of the accused, the Police altered the charges and added offences under SC & ST (PoA) Act.



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7. The learned Government Advocate(Criminal side) representing the State submitted that the complainant is the President of Devathanam Village Panchayat. She belongs to SC Community. The conversation of the accused was heard by the public who were near Jayanthi Provision Stores. Since the phone was put in Speaker mode and also recorded by the brother of the defacto complainant. The conversation was transcribed by A.M.Prakash, Data Entry Operator, Minjur Police Station and he has given an affidavit under Section 65-B of the Evidence Act. The call details collected from the Service Providers of the complainant and the accused will prove that the accused had called the complainant on 26/11/2021 at around 02.52 p.m. The call was attended by Ponnaiyan@ Kutty, the brother of the complainant. He put the phone on Speaker mode and the abusive conversation was heard by several persons who were standing thereby. The statements of those persons been recorded under Section 161 CrP.C. Therefore, the Government Advocate (CrI.Side) contended that on collection of material evidence, final report filed and same taken on file by the Sessions Court in SC.No.206/2023.

8. The submissions made by the Learned Counsels appearing on



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behalf of the petitioner/accused and the 2nd respondent/complainant heard. The submission of the Government Advocate (CrI.Side) heard and the documents relied by the prosecution perused.

9. From the evidence collected during the investigation and relied by the prosecution, it is clear that the complainant Lakshmi belongs to Adi Dravidar Community which is one of the Schedule Caste. The accused belongs to Naidu Community which is a Non-Schedule Caste. Further, the evidence collected from the service providers and the call details discloses that the SIM No:9944595859 belongs to the accused/petitioner and the SIM No:9941336806 belongs to the Complainant/respondent. On 21/12/2021, at 14.52 hrs a outgoing call from the accused to the complainant been recorded. The complainant, her brother and few other prosecution witnesses in their statements had stated that the call was received by Ponnaiyan @ Kutty and he put the phone on speaker mode. The persons nearby heard the abusive words of the accused.

10. The point for consideration is whether the evidence relied by the prosecution provides *prima facie* materials for framing charge and



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proceed against the petitioner.

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11. The Learned Counsel for the petitioner argued that, the accused did not make any abusive utterance. The telephone call and conversation is not uttered in public view or public place. To fix the petitioner, the complainant has invented that the call was put in speaker mode and heard by others. The Data Entry Operator in the Police Station A.M.Prakash had given a certificate under Section 65-B of the Indian Evidence Act as if, he had conversation with the accused on 11/12/2021 and the audio CD of the said conversation is Annexure 1 and its transcript is Annexure 2. As per the prosecution case, the offensive utterance alleged to have been recorded by Ponnaiyan @ Kutty on 21/12/2021 at 14.52 hrs in his cell phone. Neither the cell phone of Ponnaiyan @ Kutty nor the cellphone of the complainant Lakshmi recovered. The Data Entry Operator in the Police Station is not the custodian of the electronic device in which the alleged conversation was recorded. The audio CD and the transcript annexed to the police witness A.M.Prakash affidavit is not admissible in evidence. In the absence of certified under Section 65-B of the Evidence Act by the person who recorded the offensive conversation and the custodian of the electronic device in which the



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alleged conversation recorded, the prosecution case cannot stand.

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12. On examination of documents and statement of witnesses, this Court is of the view that the prosecution of the petitioner will be a futile exercise in the absence of admissible evidence about the objectionable utterance of words. The telephonic conversation between two persons is a private affair. If the receiver of the call desire that the conversation must be heard by others, its is the receiver's choice and not the desire of the caller. If the intention of the petitioner/complainant was to insult the complainant in public, he would not have called her over mobile phone. Even to presume that, he had *mens rea* to insult the complainant, the transcript of the telephonic conversation from the electronic device which was used to record the conversation must have been recovered and preserved from any tampering. Unfortunately, in this case, the devise which was used for recording the abusive utterance not been recovered by the police. From the affidavit filed by L.W-11, what is produced before the Trial Court is the audio CD between L.W-11 and the accused. The said audio CD is presumably the copy of the copy. In the statement recorded under Section 161 (2) Cr.P.C, L.W-11 had not stated how the conversation was recorded by Ponnaiyan @ Kutty in his cell phone was copied in the audio CD produced by him to the Court along with Section 65-B



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Certificate.

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13. The entire case of the prosecution is based on the telephone conversation. It is the specific case of the complainant that the conversation was recorded by Ponnaiyan @ Kutty (L.W.2). In an attempt to substitute the electronic evidence with hearsay witnesses, the prosecution witnesses say that on receiving the call from the accused, Ponnaiyan had put the phone on speaker mode for others to hear.

14. The prosecution relies on three Statements of L.W.1 Lakshmi and two statements of L.W.2 Ponnaiyan @ Kutty. In her first statement dated 30.11.2021 she has not stated anything about recording the conversation or calling her by caste name. Even in her second statement dated 10.12.2021, there is no allegation of specific utterance calling her by caste name. Only in the third statement recorded on 11.12.2021, she had said about the expression allegedly used by the accused. In none of these three statements L.W.1 had said that the conversation was recorded or heard by others at Jayanthi Provisions Store. Likewise, Ponnaiyan @ Kutty had not stated that he recorded the conversation of the petitioner in his phone.



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15. The embellishments in the statements and the failure of the prosecution to recover the devise which was used to record the conversation and the missing link between the alleged conversation of the petitioner with L.W.1 in her phone and the transcript and audio CD recorded by L.W.11 A.M.Prakash, Data Entry Operator in the Police Station clearly indicates the evidence recorded by the police fails to make out a case to take cognizance and proceed.

16. Therefore, the charge sheet in SC.No.206 of 2021 on the file of Principal District and Sessions Court, Tiruvallur is hereby quashed. As a result, this Criminal Original Petition No.8139 of 2024 is allowed. Consequently, connected Miscellaneous Petitions are closed.

26.07.2024

Index :Yes.
Internet :Yes.
Speaking Order/Non-Speaking Order
bsm

To:-

1.The Principal District and Sessions Judge, Tiruvallur.



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2. The Inspector of Police, E 3 Minjur Police Station, Tiruvallur District.

3. The Public Prosecutor, High Court, Madras.

DR.G.JAYACHANDRAN,J.

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Pre-delivery order made in
Crl.O.P.No.8139 of 2024