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Crl.R.C.No.1683 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 22.10.2024
PRONOUNCED ON : 28.10.2024

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.R.C.No.1683 of 2024 and
Crl.M.P.No.16893 of 2024

1.Sakthi Manickam

2.Jayanthi Alias Padma Gokilam

3.Manju Sree

... Petitioners

Vs.

1.The State Rep by The Inspector of Police,
C2-Race Course Police Station,
Coimbatore.

2.Jothimani

... Respondents

[R2 Suo-Motu Impleaded as per
order, dated 04.10.2024 in
Crl.M.P.No.13893 of 2024 in
Crl.R.C.No.1683 of 2024.]



Crl.R.C.No.1683 of 2024

PRAYER: Criminal Revision Petition filed under Sections 438 & 442 of BNSS Act, to call for the records pertaining to the order passed by the learned trial Court, Additional Mahila Court at Magistrate Level at Coimbatore made in Crl.M.P.No.20374 of 2024 dated 25.09.2024 in C.C.No.486 of 2024 and set aside the same by allowing this Revision Petition.

For Petitioners : Mr.V.Raghavachari, Senior Counsel for
Mr.N.Chandran

For R1 : Mr.A.Damodaran,
Additional Public Prosecutor

For R2 : Ms.T.Jothika, Legal Aid Counsel

ORDER

The petitioners/A1 to A3 in C.C.No.486 of 2024 filed discharge petition under Section 239 Cr.P.C in Crl.M.P.No.20374 of 2024 in C.C.No.486 of 2024 before the learned Judicial Magistrate, Additional Mahila Court at Magistrate Level, Coimbatore and the same was dismissed *vide* impugned order, dated 25.09.2024. Against which, the present criminal revision case is filed.



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2.This Court by order, dated 04.10.2024 *suo motu* impleaded the 2nd respondent and notice through Court and private notice ordered. Private notice to the 2nd respondent taken on 07.10.2024 and notice delivered on 09.10.2024, but no representation for the 2nd respondent either in person or by counsel. Despite the name of the 2nd respondent printed in the cause list, on 15.10.2024 none appeared for her. Hence, this Court to give opportunity and to hear the case on the side of the 2nd respondent appointed Ms.T.Jothika, learned counsel as Legal Aid Counsel for the 2nd respondent on 15.10.2024.

3.Gist of the case is that on 26.12.2022, the 2nd respondent/defacto complainant is a practicing Advocate in the Combined Courts of Coimbatore District. One Sandeep is the client of the 2nd respondent and her senior Mr.Krishnamoorthy, Advocate in a domestic violence case in D.V.C.No.72 of 2021 filed by his estranged wife/3rd petitioner herein. Since the Presiding Officer of the Additional Mahila Court at Magistrate Level, Coimbatore was on leave on 26.12.2022, the said domestic violence case was called by the



Incharge Magistrate (Fast Track Court No.I at Magisterial Level,

Coimbatore). At that time, the 2nd respondent represented that her senior

Mr.Krishnamoorthy, Advocate was not well, admitted in the private hospital

at R.S.Puram, Coimbatore and sought for adjournment requesting the case

to be listed in the first week of January, 2023. The 3rd petitioner, the

complainant in the domestic violence case objected and requested the case to

be called on 29.12.2022. Considering the plea of the 2nd respondent, the

domestic violence case adjourned to 04.01.2023. Thereafter, when the 2nd

respondent was about to leave the Court, at about 12.30 p.m the 2nd

petitioner/mother of the 3rd petitioner restrained the 2nd respondent, pulled

her robes, abused and threatened her that when she goes back home, by

engaging persons accident will be caused to her vehicle and she will be

harmed and threatened her by using obscene words in public place. The 1st

petitioner father of the 3rd petitioner passed comment stating that Advocates

act for money the way they want. Thus, the petitioners committed the

offence of restraintment, use of abusive words and threatened the 2nd

respondent in a public place. The 2nd respondent informed her Senior

Mr.Krishnamoorthy, Advocate who was in the hospital and on his advice, on



the next day on 27.12.2022, she lodged a complaint to the 1st respondent Police.

4.The Special Sub Inspector of Police attached to the 1st respondent Police Station received the complaint and registered FIR in Crime No.565 of 2022 for offence under Sections 294(b), 341, 354 & 506(1) of IPC and Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 2002. Thereafter, the Inspector of Police/LW9 took up investigation, recorded the statement of the 2nd respondent, visited the scene of occurrence, prepared Observation Mahazar, Rough Sketch in presence of LW6 and LW7, recorded the statement of the Advocates/LW2 to LW4 and LW5/Employee of the Cooperative Society functioning in the Court premises. LW2 to LW5 gave statement confirming the complaint and statement of the 2nd respondent. On completion of investigation, charge sheet filed before the learned Judicial Magistrate, Additional Mahila Court at Magistrate Level, Coimbatore and taken on file as C.C.No.486 of 2024. On filing of charge sheet, the petitioners filed discharge petition and the same was dismissed.



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5.The learned Senior Counsel appearing for the petitioners submitted that it is an admitted fact that the 3rd petitioner filed domestic violence complaint against her estranged husband Sandeep in D.V.C.No.72 of 2021 before the Special Court to try cases filed under the Protection of Women from Domestic Violence Act, Coimbatore and the domestic violence case was listed for hearing on 26.12.2022 before the Incharge Magistrate viz., Fast Track Court-I at Magisterial Level, Coimbatore since the Presiding Officer of the Special Court was on leave. On 26.12.2022, the 2nd respondent sought adjournment before the Incharge Court requesting to list the case in the first week of January, 2023. The 3rd petitioner through her Advocate insisted the case to be listed on 29.12.2022. But the Incharge Magistrate on the request of the 2nd respondent adjourned the case to 04.01.2023. For this reason, it is projected as though the petitioners restrained the 2nd respondent, pulled her robes and threatened her in public. It is an admitted position that the domestic violence case posted for arguments, hence long date was opposed. On 04.01.2023, the 2nd respondent filed memo that FIR registered against the petitioners in Crime



No.565 of 2022. The Trial Court recorded the said FIR is not related to the domestic violence case and rejected the same.

6.He further submitted that the alleged occurrence said to have taken place on 26.12.2022 but the complaint given on 27.12.2024 with delay, no explanation given for such delay. Added to it, it is seen that in the complaint and in the statement under Section 161 Cr.P.C, there are exaggeration and material improvements incorporating words as per requirements for the Section charged. Likewise, there is improvement in the statement of LW2 to LW5 who all said to be present in the scene of occurrence when the alleged occurrence took place. Neither in the complaint nor in the statement under Section 161 Cr.P.C of the 2nd respondent, there is any reference to the presence of LW2 to LW5 in the scene of occurrence. LW2 to LW4 are Advocates practicing in the Combined Courts of Coimbatore, no one speak about others presence. In the statement of LW5, the presence of LW2 to LW4 not mentioned. LW5 qualifies that the Advocates and public present there objected and shouted at the petitioners for their conduct and thereafter, they were sent out. But this fact is not found in the complaint and in the



statements of any of the witnesses.

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7.He further submitted that the occurrence said to have taken place in the Court premises, but neither the Presiding Officer nor the Head Clerk or any incharge person of the Court lodged any complaint for such incident. The 2nd respondent not made any complaint to the Court about the incident. Thus, a false case projected against the petitioners to cast aspersions and to create defence in the domestic violence complaint to project the petitioners' conduct. He further submitted that the petitioners sought details from the Office of the Principal District Court, Coimbatore in RTI.No.70 of 2024 calling for CCTV footage recordings on 26.12.2022 between 12.00 p.m and 02.00 p.m and on 27.12.2022 between 02.30 p.m and 04.30 p.m. The reply received from the Principal District Court, Coimbatore *vide* D.No.6576/2024, dated 24.07.2024 is that as per circular of the High Court in ROC.No.2020/2018/D1/MB, dated 24.08.2018, the information cannot be given and it was also informed that in the event of Police asking for any such particulars for investigation, the details can be given. In application in RTI.No.69 of 2024, the petitioners further sought information whether the



Police pursuant to the registration of FIR in Crime No.565 of 2022 asked for video recordings and whether the Police have power to register a case for incident happened in the Court premises. The answer given by the Principal District Court in D.No.6576/2024, dated 24.07.2024 is that the respondent Police not sought for any such request of CCTV recordings for the incident on 26.12.2022 and 27.12.2022. It also confirms the Police have no power to register a case in the absence of any complaint from the Court in connection with the happenings in the Court premises. The above fact would clearly show that how in a perfunctory manner, the respondent Police acted on the pressure of the 2nd respondent without verifying the true facts and following the procedure contemplated.

8.The learned Senior Counsel for the petitioners referred to the decision of the Hon'ble Apex Court in the case of “***N.S.Madhanagopal & Anr., v. K.Lalitha*** reported in ***2022 LiveLaw (SC) 844***” wherein it had held that mere utterance of obscene words are not sufficient but there must be a further proof to establish that it was to the annoyance of others. Likewise to attract the offence under Section 341 IPC, it has to be proved that it has to



be proved that there was obstruction by the accused; (ii) such obstruction prevented a person from proceeding in a direction to which he had a right to proceed; and (iii) the accused caused such obstruction voluntarily. He further submitted that this Court in several cases held that mere threat in the absence of with further action would not attract the offence under Section 506(i) IPC. He further referred to the decision in the case of “***Union of India v. Prafulla Kumar Samal & another*** reported in (1979) 3 SCC 4” wherein it is held that while considering the discharge petition, the Magistrate not to act merely as recording machine, it is necessary to sift and weigh the materials on record and if there is no *prima facie* evidence or the evidence is totally unworthy of credit, it is the duty of the Magistrate to discharge the accused. In this case, the Trial Court failed to follow the dictum of the Hon'ble Apex Court. Thus, on the uncontroverted statement of witnesses, it is seen that none of the offences against the petitioners are made out. Making the above submissions and relying upon the decisions, the learned Senior Counsel for the petitioners prays for discharge.



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9. The learned counsel for the 2nd respondent submitted that the 2nd respondent is a practicing Advocate in the Combined Courts of Coimbatore District. The 2nd respondent was representing her client Sandeep in a domestic violence case in D.V.C.No.72 of 2021 filed by the 3rd petitioner herein. The 2nd respondent discharged her duty as an Advocate. On 26.12.2022 the Presiding Officer of the Additional Mahila Court, Coimbatore was on leave, the domestic violence complaint of the 3rd petitioner called before the Incharge Court (Fast Track Court-I at Magisterial Level, Coimbatore. Since the 2nd respondent's senior Mr.Krishnamoorthy, Advocate was not well admitted in the private hospital, she sought adjournment and requested to list the domestic violence case in the first week of January, 2023. This was objected by the 3rd petitioner who sought date for 29.12.2022. But the Incharge Magistrate adjourned the case to 04.01.2023. After completion of the Court hearing, when the 2nd respondent was coming out, at about 12.30 p.m the 2nd petitioner restrained her, pulled her robes, abused and threatened that the 2nd petitioner would engage persons to cause damage and hurt her when she proceeds home in her vehicle. The 1st petitioner abused that the Advocates act for money would do



anything for clients and the 3rd petitioner also threatened her. This incident witnessed by LW2 to LW5, of which LW2 to LW4 are Advocates who are present in the Court premises. She further submitted that the petitioners' contention are disputed facts which has to be necessarily decided during trial. The Trial Court at the stage of framing charges is required to see whether there is *prima facie* material against the accused for committing the offence and nothing more which has been reiterated by the Hon'ble Apex Court in the cases of “***Pallavi v. State (UT of Chandigarh) and Others*** reported in (2020) 3 SCC (Crl.) 612 and ***Tarun Jit Tejpal v. State of Goa and another*** reported in (2021) 3 SCC (Crl.) 283”. Hence, she prays for dismissal of the revision.

10.The learned Additional Public Prosecutor appearing for the 1st respondent Police submitted that the 2nd respondent lodged a complaint on 27.12.2022 complaining that on 26.12.2022 she was restrained, abused and threatened in the Court premises by the petitioners for getting adjournment in a domestic violence case. The 2nd respondent got adjournment of the domestic violence case to the first week of January, 2023. The 3rd petitioner



got offended for the same since the 3rd petitioner insisted to list the case to 29.12.2022. When the 2nd respondent came out from the Court, the 2nd petitioner restrained her, pulled her gown, abused and threatened her in public and also criminally intimidated which was witnessed by LW2 to LW5. LW2 to LW4 are the Advocates who were present in the Court and LW5 is the employee of the Cooperative Society functioning in the Court premises. In the presence of independent witnesses *viz.*, LW6 and LW7, the Observation Mahazar and Rough Sketch prepared by LW9/Investigating Officer. LW8 registered FIR on the complaint of the 2nd respondent since it is a cognizable offence and the Police not required to get any prior permission for registering cognizable offence cases. The Investigating Officer/LW9 finding complaint genuine and statement of witnesses (LW2 to LW5) confirming the complaint, filed the charge sheet. He further submitted that it is the prerogative of the Investigating Officer to collect, further corroborative material only if any doubt found in the complaint and the statements recorded. Hence, non collection of CCTV recordings alone would not make the case doubtful. He further submitted that the contention of the petitioners are to be decided during trial, hence strongly opposed for



discharge.

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11.This Court considered the rival submissions and perused the materials available on record.

12.It is not in dispute that on 26.12.2022 the occurrence took place inside the Court premises. The 3rd petitioner earlier lodged a domestic violence complaint against her estranged husband Sandeep and the case is pending in D.V.C.No.72 of 2021 which is defended by the Advocate Mr.Krishnamoorthy and his junior, the 2nd respondent herein. On 26.12.2022, the Presiding Officer of the Additional Mahila Court at Magistrate Level, Coimbatore was on leave and the case was adjourned to 04.01.2023 on the request of the 2nd respondent but it was objected by the petitioners who insisted the case to be listed on 29.12.2022. On 04.01.2023 the domestic violence complaint posted for arguments. In this case, though the objections raised and heated words exchanged before the Incharge Court, none from the Incharge Court examined as witnesses. From the complaint, it is seen that on 26.12.2022 at about 12.30 p.m when the 2nd



respondent was coming out of the Court, at that time the petitioners said to have restrained the 2nd respondent, pulled her gown, abused and threatened her in the Court premises. Admittedly, no complaint from the Court received by the respondent Police. It is also seen that the 2nd respondent not made any complaint to the Court about the incident.

13.It is to be seen that the statement of LW1/2nd respondent is with exaggeration and improvements, with qualifying words of abuse added to attract offences as projected. Neither in the complaint nor in the statement of LW1, there is any mention about the presence of the other Advocates (LW2 to LW4) or any public (LW5). In the statement of LW2 to LW4/Advocates and LW5/Employee of Cooperative Society who are said to be present in the scene of occurrence, there is no mention about each other in their statements. The Observation Mahazar, Rough Sketch and the statements of LW6 and LW7 confirms the occurrence took place inside the Court premises. The RTI report confirms the petitioners' effort in collecting CCTV recordings to prove no such incident happened, but the RTI application was denied in view of the circular of the High Court. The other



RTI reply confirms that the respondent Police not thought fit to collect CCTV recordings which is a prime material to prove the foundational facts of the case. The permission of the Court, for any incident happened inside the Court is required and police investigated without Court permission is confirmed in the RTI reply.

14.The Hon'ble Apex Court in *N.S.Madhanagopal* case (Cited Supra) referring to earlier decisions, held that 'obscenity' is the "substantial tendency to corrupt by arousing lustful desires" and in order to be "obscene", the matter must "tend to sexually impure thoughts". Further held that mere utterance of obscene words are not sufficient to attract the offence under Section 294(b) IPC. For proving wrongful obstruction, three conditions are primary *i.e.*, there must be an obstruction by the accused, such obstruction prevented a person from proceeding in a direction to which he had a right to proceed and the accused caused such obstruction voluntarily. Likewise empty threat of intimidation without further action would not attract the offence of criminal intimidation.

15.The Trial Court in the impugned order records CCTV Camera



recordings not collected by the respondent Police and no proper permission sought by the respondent Police before registering and investigating the case for the incident taken place inside the Court premises will greatly affect the case, but gives reason that at the time of trial the same can be considered and not in the discharge petition, is not proper.

16.Thus, taking uncontroverted statements and materials produced as a whole, it is seen that no offence is made out against the petitioners even *prima facie* justifying continuation of the prosecution against the petitioners.

17.In view of the above, the petitioners are discharged from the case in C.C.No.486 of 2024 and the impugned order, dated 25.09.2024 in Crl.M.P.No.20374 of 2024 in C.C.No.486 of 2024 passed by the learned Judicial Magistrate, Additional Mahila Court at Magistrate Level, Coimbatore is set aside. Accordingly, this criminal revision case stands allowed.



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18.In view of the discharge of the petitioners, the above case cannot be referred or quoted against the petitioners in future in any manner including future employment. Consequently, connected criminal miscellaneous petition is closed.

28.10.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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CrI.R.C.No.1683 of 2024

To

- 1.The Additional Mahila Court at Magistrate Level,
Coimbatore
- 2.The Inspector of Police,
C2-Race Course Police Station,
Coimbatore.
- 3.The Public Prosecutor,
Madras High Court.



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M.NIRMAL KUMAR, J.

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