



CrI.O.P.(MD) No.1871 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.03.2024

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.1871 of 2024

and

CrI.M.P.(MD) No.1389 of 2024

P.Arun

...Petitioner

vs

**1.The Sub Inspector of Police,
Kombai Police Station,
Theni District.**

2.Roopa Soundari

...Respondents

**PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C,
praying, to call for the records relating to the impugned FIR in Crime No.
166 of 2023 on the file of the first Respondent and quash the same.**

For Petitioner : Mr.N.Marimuthu

**For R1 : Mr.M.Veeranthiran
Government Advocate (CrI.side)**

For R2 : Mr.R.Anandharaj



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ORDER

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This Criminal Original Petition has been filed by the Petitioner to quash the FIR in Crime No.166 of 2023 on the file of the first Respondent.

2.The learned Counsel for the Petitioner submits that the Petitioner is the sole accused in Crime No.166 of 2023 on the file of the first Respondent. It is the contention of the learned Counsel for the Petitioner that the second Respondent / Defacto complainant and the Petitioner were married. Subsequently, the Defacto complainant delivered a female child. There had been matrimonial dispute between them. Therefore, the second Respondent left the matrimonial home and separated from the husband / Petitioner herein. The Petitioner had filed divorce Petition in H.M.O.P.No. 447 of 2023 pending on the file of the Family Court, Theni. After that, this Petition had been filed in the year 2023 as though the offences were committed on 03.10.2023, complaint lodged by the Defacto complainant, on 10.10.2023.

3.The learned Counsel for the Petitioner submits that as per the contents of the FIR in Crime No.166 of 2023 pending on the file of the first



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Respondent, the Petitioner herein is the husband of the *defacto* Complainant. He is alleged to have scolded the *defacto* Complainant in abusive words attracting Section 294(b) IPC, which made her to attempt to commit suicide. It is the contention of the learned Counsel for the Petitioner that as per FIR, the Petitioner is alleged to have contacted the *defacto* Complainant on her mobile and scolded her using abusive language, which attracts Section 294(b) IPC.

4.It is the further contention of the learned Counsel for the Petitioner that Section 294(b) IPC is not at all attracted when the words are used within the four walls of a house or a room. It attracts only when the abusive words are used in a public place in the presence of members of the public. The house, where the *defacto* complainant was staying, was not a public place. As per the contents of the FIR, Section 294(b) IPC is not all attracted. Therefore, he seeks to quash the FIR.

5.It is his further submission that on mobile phone also, it is between two individuals. Third parties will not hear the same. For using the abusive words through mobile phone, Section 294(b) IPC cannot be pressed into



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service. Here, the FIR proceeds based on the mobile messages through audio by the Petitioner. Further, the learned Counsel for the Petitioner had provided the details of the calls. Nowhere the calls of the Petitioner's mobile phone number was found. Only when the case was argued, the learned Counsel for the *defacto* Complainant submits that the Petitioner is in the habit of using mobile phone of other persons. As per the complaint, the mobile phone of the Petitioner contains specific number. Only during the arguments, the learned Counsel for the second Respondent/*defacto* Complainant submitted that the Petitioner would have used the mobile phone of other person also. Considering the same that the mobile phone was used resulting in the *defacto* Complainant suffering mentally, which forced her to commit suicide. Therefore, for the offence under Section 4 of Prohibition of Harassment of Women Act, 2002 was also registered.

6.It is the contention of the learned Counsel for the Petitioner that before ever proceeding with the conduct of preliminary enquiry, the first Respondent had registered a case for matrimonial dispute between the husband and wife.



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7.The learned Counsel for the second Respondent vehemently objected stating that the case attracts the provisions of Section 294(b) IPC and Section 4 of Prohibition of Harassment of Women Act, 2002. The learned Government Advocate (Criminal Side) on instructions of the first Respondent submits that the Defacto complainant is a Graduate, holding a degree, B.E. (Electrical and Electronics Engineering). The Petitioner wanted her to deliver a male child. Since she delivered a female child, there had been misunderstanding between them. Further, he submits that daughter born to the Petitioner and the daughter of the Defacto complainant had lump skin growth under the ear, which was considered by the Petitioner herein as objectionable. After that, the second Respondent separated from the matrimonial home. The second Respondent is unable to bear the torture of the Petitioner herein, took extreme level of attempting to commit suicide by taking sleeping pills, on 03.10.2023 and she was in Hospital for more than 6 days. Therefore, he objects to quash the F.I.R. In Crime No. 166 of 2023.

8.The learned Counsel for the second Respondent relied on the judgments of the Hon'ble Supreme Court in ***Central Bureau of***



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Investigation (CB) and another Vs. Thommandru Hannah Vijayalakshmi

reported in ***AIR ONLINE 2021 SC 869*** and the case of ***M/S.Neharika***

Infrastructure Pvt.Ltd., Vs. State of Maharashtra and others reported in

AIR 2021 Supreme Court 1918.

9.The allegation made by the Petitioner is with regard to abuse by the Petitioner against the second Respondent resulting in her suffering mental agony and attempted to commit suicide. Whether the mobile phone of the Petitioner was pressed into service or he had used the mobile phone of others cannot be gone into at this stage. A newly married woman attempted to commit suicide. Therefore, the case was registered. Section 294(b) IPC, as stated by the Petitioner, is not attracted. Still, Section 4 of the Prohibition of Harassment of Women Act, 2002 is attracted. The contention of the *defacto* Complainant that the Petitioner expected male baby and for delivering the female child, the *defacto* Complainant was harassed by the Petitioner and also abused needs detailed investigation. The same cannot be quashed based on the arguments of the learned Counsel for the Petitioner.

10.The ruling cited by the learned Counsel for the second Respondent



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will not be applicable to the facts of the present case, as the FIR proceeds on the basis of the phone call. When the phone is used, it does not attract Section 294(b) IPC, since Section 294(b) IPC is attracted, if the offence is committed in the public place.

In the result, **this Criminal Original Petition is allowed.** The FIR in Crime No.166 of 2023 on the file of the first Respondent is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

Internet: Yes./No
Index: Yes/No
ls/mm

28.03.2024

To

- 1.The Sub Inspector of Police,
Kombai Police Station,
Theni District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SATHI KUMAR SUKUMARA KURUP, J.

ls/mm

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