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Crl.O.P.(MD)No.5387 of 2022



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.03.2024**

CORAM:

THE HONOURABLE MR.JUSTICE M.DHANDAPANI\

Crl.O.P.(MD) No.5387 of 2022

and

Crl.O.P.(MD).No.3815 of 2022

1.Noor Mohammed

2.Raja Mohammed

3.Shahul Aameed @ Sheik Abdul Kadar

4.Majeethu@ Abdul Majith

... Petitioners

Vs.

1.The State represented by its
The Sub Inspector of Police,
S.V.Mangalam Police Station,
Sivagangai District.
(Crime No.113 of 2019)

2.Kamal Basha

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining in the final report in S.T.C.No.01 of 2021 on the file of the learned District Munsif cum Judicial Magistrate, Singampunari and quash the same as illegal as against these petitioners.



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For Petitioners : Mr.S.A.S.Alaudeen

For R-1 : Mr.S.Manikandan
Government Advocate
(Criminal Side)

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in S.T.C.No.01 of 2021 before the learned District Munsif cum Judicial Magistrate, Singampunari, as against the petitioners.

2. The case of the prosecution is that due to management dispute arose between the petitioners and the second respondent, the petitioners herein abused the second respondent by using filthy language and assaulted him and threatened him with dire consequences. Aggrieved over the same, the second respondent made a complaint before the respondent Police and the respondent Police registered FIR in Crime No.113 of 2019 and conducted investigation and after completing investigation, they filed a charge sheet in S.T.C.No.01 of 2021 before the learned District Munsif cum Judicial Magistrate, Singampunari, for the offence punishable under Sections 294 (b) and 323 IPC. Challenging the same, the present petition has been filed.



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3. The learned counsel appearing for the petitioners would submit that the second respondent has not produced any iota of materials to show that he has sustained injuries. He would further submit that in the absence of any materials, implicating the petitioners herein as accused is not sustainable one. Hence, he prays for allowing this petition.

4. The learned counsel appearing for the second respondent would submit that the second respondent was holding the position as the President of the Jamath since from the year 2014 to 2019. He would further submit that some of the Jamath Members have been conflicting with him for the post of President, for which, the petitioners herein abused the second respondent by using filthy language and threatened him with dire consequences. He would further submit that all those points raised before this Court is a triable issue, which cannot be canvassed before this Court and it can be canvassed only at the time of trial.

5. The learned Government Advocate (Criminal Side) appearing for the State has adopted the arguments of the learned counsel appearing for the second respondent.



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4. As per decision of the Hon'ble Supreme Court in ***N.S.Madhanagopal & Anr. Vs. K.Lalitha*** reported in **2022 LiveLaw (SC) 844**, in order to attract the offence under Section 294(b) IPC, there must be a proof to establish that the words uttered by the accused person annoyed others. It is the specific case of the prosecution that the petitioners/accused had abused the second respondent in filthy words with regard to the management of of the Jamath. The ingredients of Section 294(b) are that the offender has done any obscene act in any public place or has sung, recited or uttered any obscene song or word in or near any public place and that he has so caused annoyance to others. In order to attract the offence under Section 294 IPC, the prosecution has to prove that the incident must have occurred in a public place. Admittedly, the second respondent has not stated anything about the abusing or filthy words allegedly uttered by the petitioners. Even assuming for argument sake that the petitioners had abused the second respondent / defacto complainant by using filthy or obscene words, it is not their case that some other persons were there at that time and that the alleged words had caused annoyance to them.



5. As per Section 323 IPC, there must be a wound certificate to prove the offence, but, in the present case, the wound certificate was not produced before this Court.

6. In the absence of any materials to connect the petitioners with the alleged offences, permitting the prosecution to proceed with the case would only amount to an abuse of process of law and as such, the pending proceedings against the petitioners are liable to be quashed.

7. Accordingly, this Criminal Original Petition is allowed and the proceedings in S.T.C.No.01 of 2021 before the learned District Munsif cum Judicial Magistrate, Singampunari, against the petitioners stands quashed. Consequently, connected miscellaneous petition is closed.

13.03.2024

Ncc : Yes /No

Index : Yes/No

Internet : Yes/No

tsg

To

1.The District Munsif cum Judicial Magistrate, Singampunari

2.The Sub Inspector of Police,
S.V.Mangalam Police Station, Sivagangai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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M.DHANDAPANI. J.

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