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CrI.O.P.(MD)No.8020 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **27.03.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CrI.O.P.(MD) No.8020 of 2022

and

CrI.M.P.(MD)No.5431 of 2022

V.Baskaran

... Petitioner/Sole Accused

Vs.

1.The Inspector of Police,
Chinnamanur Police Station,
Theni District.

... 1st Respondent/Complainant

2.Priyadharshini

... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of C.P.C., to call for the records in Crime No.1234 of 2021 on the file of the Inspector of Police, Chinnamanur Police Station, Theni District and quash the same as illegal.

For Petitioner : Mr.P.Vasanthakumar

For Respondents : Mr.B.Nambiselvan
Additional Public Prosecutor for R1

Mr.P.Pandiarajan for R2



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ORDER

The matter is taken up for hearing today under the caption 'for clarification'.

2. This Criminal Original Petition has been filed to quash the impugned FIR in Crime No.1234 of 2021, on the file of the first respondent police.

3. The case of the petitioner is that on 18.11.2021, due to property dispute between the petitioner's family and the defacto complainant's family, the husband of the defacto complainant made a complaint before the first respondent police against the petitioner and others and the same was registered in Crime No.1234 of 2021 for the offences punishable under Section 294(b) of IPC. Challenging the same, the present petition is filed.

4. The learned counsel for the petitioner would submit that though the FIR was registered on 24.11.2021, the petitioner has obtained an order of interim stay on 28.04.2022. Hence, the limitation period



prescribed under Section 468 of Cr.P.C., is not applicable in the present case. He would further submit that the allegation against the petitioner is that he contacted the second respondent over phone and abused her in filthy language, thereby, the first respondent police registered the above said case against the petitioner. In order to prove the same, the prosecution has failed to produce the call details before the concerned Court under Section 65B of the Evidence Act. Hence, he prays for allowing this petition.

5. The learned Additional Public Prosecutor appearing on behalf of the first respondent Police would submit that though interim stay was granted on 28.04.2022, the first respondent police inadvertently filed a charge sheet before the concerned Court and the same was taken on file in S.T.C.No.2361 of 2023. He would further submit that there are materials available to proceed with the case against the petitioner and the charges made against the petitioner have to be gone into only at the time of trial and hence, he prays for dismissal of this petition. He fairly conceded that no call details are available to prove the allegation against the petitioner.

6. Heard the learned counsel on either side and perused the



materials available on record.

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7. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record.

8. It is the case of the respondents that the petitioner abused the defacto complainant in filthy language over phone which has resulted in the registration of FIR u/s 294 (b) IPC. However, even at the outset it is to be pointed out that the call records are not available with regard to the offence committed and, therefore, the exact utterances of the petitioner are not known. Only on that premise, interim stay was granted on 28.04.2022 and, thereafter, the respondent had filed the charge sheet before the court below, which has been taken cognizance of in STC No. 2361/2023.

9. Be that as it may. As stated above, there is no material to infer that the ingredients of Section 294 (b) IPC are attracted. In this regard, useful reference can be had to the decision of the Apex Court in ***N.S.Madhanagopal & Anr. – Vs – K.Lalitha (2022 Live Law (SC) 844)***, wherein the Apex Court, in categorical terms has held that mere abusive



or defamative words by itself cannot attract an offence u/s 294 (b) IPC.

To prove the offence u/s 294 IPC 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. The test of obscenity u/s 294 (b) IPC is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences.

10. In the case on hand, even according to the prosecution, the utterances alleged have been made over phone by the petitioner. Such being the case, there would be no scope for the prosecution to prove that it had caused annoyance to others. That being the case, the ingredients of Section 294 IPC would not stand attracted to the act of the petitioner and, therefore, the case of the petitioner would be squarely covered by the decision of the Apex Court in the case of *State of Haryana – Vs – Bhajan Lal (1992 SCC (Crl.) 426)*.

11. In the above circumstances, this Court has no hesitation to hold that the prosecution of the petitioner is not only an exercise in futility, but is directly hit by the principles laid down in *Bhajan Lal's case* and, therefore, the case deserves to be quashed.



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12. For the reasons aforesaid, this petition is allowed and the FIR in Crime No.1234/2001, which has been taken cognizance of in STC No. 2361/2023 on the file of the learned Judicial Magistrate, Uthamapalayam is quashed. Consequently, connected miscellaneous petition is closed.

27.03.2024

Index : Yes/No
Internet : Yes/No
NCC: Yes/No
SJI

To

- 1.The Judicial Magistrate, Uthamapalayam.
- 2.The Inspector of Police,
Chinnamanur Police Station,
Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI, J.

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