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CRL.O.P.No.8213 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.03.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.8213 of 2025
and Crl.M.P.No.5368 of 2025

Vignesh

... Petitioner

vs.

1. State rep.by
The Inspector of Police,
H-05 Police Station,
New Washermenpet, Chennai 600 081.

2. Manikandan

.. Respondents

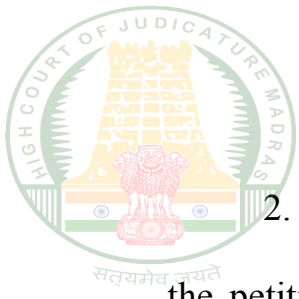
PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, praying to call for the records and to quash the FIR in Crime No.1059 of 2024 on the file of the first respondent.

For Petitioner : Mr. V.Sambamurthy

For R1 : Mr.Gopinath
Government Advocate (Crl. Side)

ORDER

This petition has been filed to call for the records and to quash the F.I.R. in Crime No.1059 of 2024 registered by the first respondent police for offences under Sections 296(b), 118(i), 132, 351(3)(b) BNS, as against the petitioner.



2. The case of the prosecution is that on 28.09.2024 at about 5.15 p.m.,

the petitioner was on the way to his mother-in-laws house in Kaladipet by Scooter along with his wife and 10 month old baby. His wife and his child were pillion riders. He was driving the scooter very slowly with great care and caution towards traffic rules. He was driving to the left hand side of the road in slow speed considering the fact that the wife was sitting with the child at the back side of the scooter. At that time, the Madras transport bus bearing No.56D come rashly behind the scooter almost dashing the scooter. The petitioner and his wife got frightened and the wife was about to fall down with child. The petitioner immediately stop the scooter in order to save the wife and the child and questioned the driver “ you do not know how to drive? Why are you driving the bus so rashly without considering the public? and never considered that he was driving the two wheeler with knife and child and further questioning who gave the driving license to drive the bus in such a way.

3. The learned Counsel appearing for the petitioner would submit that the petitioner is an innocent person and stated that there was absolutey no base for the petitioner's arrest and remand. Hence he prayed to quash the same.



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4. The learned Additional Public Prosecutor would submit that the investigation is almost completed and the respondent police is yet to file final report.

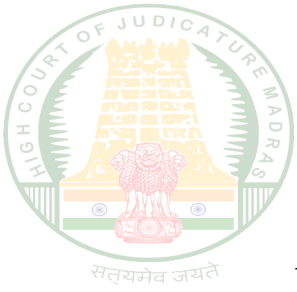
5. Heard the learned Counsel appearing on either side and perused the materials placed on record.

6. On perusal of the complaint, allegations levelled against the petitioner under Sections 296(b) and 118(1), 132, 351(3)(b) of BNS. There was no injury sustained by the second respondent. The entire incident is also rival in nature and keeping the FIR pending, no purpose would be served. Further, where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and do not make out a case against the accused.

7. In order to attract the offence under Section 296(b) of BNS, there must be an uttering of words to affect the person who lodged the complaint. In this regard it is relevant to extract the Section 296(b) of BNS, as follows :-

"296. Obscene acts and songs —Whoever, to the annoyance of others—

(a) does any obscene act in any public place, or



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(b) sings, recites or utters any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to one thousand rupees, or with both."

8. Admittedly, there is absolutely no words uttered by the petitioners as such to constitute the offence under Section 296(b) of BNS, there is no averments and allegations. Further the charges do not show that on hearing the obscene words, which were allegedly uttered by the petitioners, the witnesses felt annoyed. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the petitioners annoyed others, it can not be said that the ingredients of the offence under Section 296(b) of BNS is made out.

9. In this regard, it is relevant to rely upon the judgment reported in **2025 SCC OnLine SC 238** in the case of ***Om Prakash Ambedkar Vs. State of Maharastra and ors***, in which the Hon'ble Supreme Court of India held that the test of obscenity under Section 296(b) of BNS is whether the tendency of the matter charged as obscenity is to deprave and corrupt those, whose minds are open to such immoral influences. This Court finds that the words uttered in this case have such a tendency. The words are defamatory about the



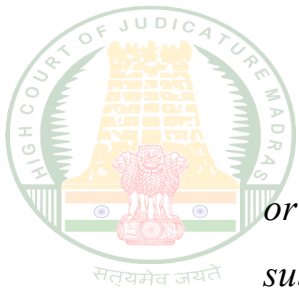
complainant but this Court doesn't think that the words are obscene and the utterance would constitute an offence punishable under Section 296(b) of

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BNS. Further it has to be noted in the present case in the absence of words which will involve some lascivious elements arousing sexual thoughts or feelings or words cannot attract the offence under Section 296(b) of BNS. Mere abusive, humiliating or defamative words by itself cannot attract an offence under Section 296(b) of BNS. Therefore, there must be a further proof to establish that it was to the annoyance of others, which is lacking in the case. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the accused annoyed others, it cannot be said that the ingredients of the offence under Section 296(b) of BNS is made out. Therefore, no case is made out as against the petitioner to attract the offence under Section 296(b) of BNS.

10. In order to attract the offence under Section 118(1) of BNS it is relevant to extract the Section 118(1) of BNS, as follows :-

“118(1). Voluntarily causing hurt by dangerous weapons or means — Whoever, except in the case provided for by section 122, voluntarily causes hurt by means of any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death, or by means of fire or any heated substance, or by means of any poison or any corrosive substance,



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or by means of any explosive substance or by means of any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood, or by means of any animal, shall be punished with imprisonment of either description for a term which may extend to three years, or with fine which may extend to twenty thousand rupees, or with both.”

Admittedly, the victim did not take any treatment in any of the hospital and no doctor was examined by the prosecution. Therefore, there is absolutely no material to attract the offence under Section 118(1) of BNS.

11. It is to be noted that while exercising the power under Section 482, the Court should be slow, at the same time, if the Court finds that from the entire materials collected by the prosecution taken as a whole, would not constitute any offence, in such situation, directing the parties to undergo ordeal of trial will be a futile exercise and it will infringe the right of the persons and in this regard, the Apex Court in ***State of Haryana and others Vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) Supreme Court Cases 335***, has been held as follows :

“.....

(a) where the allegations made in the First Information

Report or the complaint, even if they are taken at their face



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value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

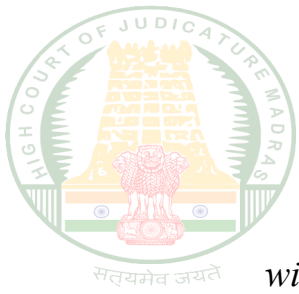
(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or -complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;



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(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

12. It is also relevant to note the definition of Unlawful Assembly:-

“Unlawful Assembly-

An assembly of five or more persons is designated an ? unlawful assembly?, if the common object of the persons composing that assembly is -

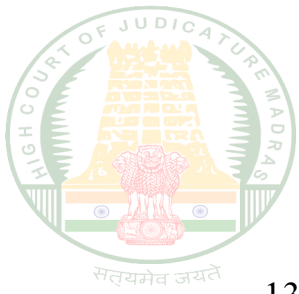
(i) to overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

(ii) to resist the execution of any law, or of any legal process; or

(iii) to commit any mischief or criminal trespass, or other offence; or

(iv) by means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

(v) by means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.-



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13. Only when the assembly fit into any of the above circumstances, it could be construed as unlawful. The accused had not shown any criminal force to commit any mischief, crime or any offence or by way of criminal force or tried to take possession of the property or right to use of incorporeal right which is in possession of enjoyment of others or rights.

14. Therefore, this Court finds that the entire proceedings initiated as against the petitioners under Sections 296(b), 118(1), 132, 351(3) B of BNS. cannot be sustained and liable to be quashed.

15. Accordingly, the FIR in Crime No.1059 of 2024 on the file of the first respondent, is hereby quashed and this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

.04.2025

Neutral citation : Yes/No
Speaking/non-speaking order
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G.K.ILANTHIRAIYAN, J.

kkd

To

1. The Inspector of Police,
H-05 Police Station,
New Washermenpet,
Chennai 600 081.
2. The Public Prosecutor,
High Court, Madras.

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