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Crl.R.C.No.2211 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2025

CORAM :

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

Crl.R.C.No.2211 of 2024

A.Pavadaisamy

... Petitioner

Vs.

State Rep by Inspector of Police,
CBCID Police Station, Puducherry.
Cr.No.6/2018

... Respondent

Prayer : Criminal Revision Case filed under Section 438 r/w 442 of BNSS, 2023, pleased to set aside the order dated 24.10.2024 passed in Cr.M.P.No.2454 of 2024 in C.C.No.383 of 2023 on the file of the learned Chief Judicial Magistrate at Puducherry and consequentially allow the Cr.M.P.No.2454 of 2024 filed by the petitioner under Section 239 of Cr.P.C.

For Petitioner : Mr.Prakash Adiapadam

For Respondent : Mr.K.S.Mohandass
Public Prosecutor (Puducherry)



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ORDER

This Criminal Revision Case is directed against the order dated 24.10.2024 passed in Cr.M.P.No.2454 of 2024 in C.C.No.383 of 2023 on the file of the learned Chief Judicial Magistrate, Puducherry, thereby dismissed the petition to discharge the petitioner from the charges.

2. The case of the prosecution is that the *de-facto* complainant is the President of Congress Party in South District, Puducherry. While being so, on 21.04.2018 at about 04.00 p.m., two audio/voice messages, which is a private telephonic conversation between the petitioner and one Shyam, Proprietor of Namadhu Manasatchi weekly magazine were posted in a whatsapp group, namely India Puratchiyalar Iyyakkam in his friend's mobile. The said voice messages were about 12.07 minutes and 15.46 minutes with screenshots. In the said voice messages, it is stated that the *de-facto* complainant had cheated several persons in Puducherry and derogatory statements were made about his wife and his sister. Therefore, the image of *de-facto* complainant and his family members was tarnished on social media and due to the same, his hypertension rose



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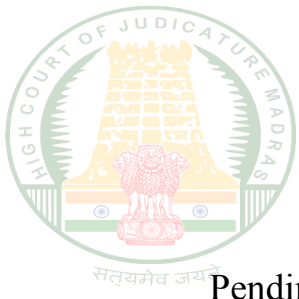
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and thereby, he fell down. Due to which, he sustained spinal cord injury.

On receipt of the complaint, the respondent registered an FIR in Crime No.6 of 2018 for the offence punishable u/s 501(b), 506(i), 509 of IPC and Section 67 of the IT Act, 2000 r/w 34 of IPC. After completion of investigation, a final report was filed before the Chief Judicial Magistrate at Puducherry and the same has been taken cognizance in C.C.No.383 of 2023 for the offence u/s 501(b), 506, 509 of IPC r/w 34 of IPC and Section 67 of the IT Act. The charges framed against the petitioner are as follows :-

“That on 21.01.2018 at about 04.00 hrs, the accused persons A1 and A2 noted in Col.No.11 of this charge sheet were joined together infurtherance of common intention, were made conversation among themselves by abusing the complainant V.Seenuvasamurthy, his wife and his sister with derogatory words and shared the same in social media, criminally intimidated the complainant and his family members with intend to insult the modesty of women through whatsapp group and thereby insulted the complainant and his family which leads to depression to the complainant.

Thus, the accused persons were liable for punishment under section 501(b), 506, 509 IPC & Sec. 67 of IT Act, 2000 r/w 34 IPC.”

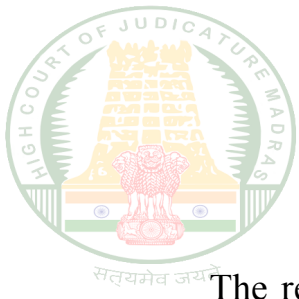


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Pending framing of charges, the petitioner had filed a petition in Cr.M.P.No.2454 of 2024 in C.C.No.383 of 2023 seeking to discharge him from the charges, which was dismissed vide order impugned dated 24.10.2024. Aggrieved by the same, the present revision is filed.

3. The learned counsel for the petitioner would submit that for the very same cause of action, the respondent also registered an FIR in Crime No.3 of 2019 dated 19.01.2019 for the offence u/s.501(b), 506(i), 509 IPC and Section 67 of IT Act r/w Section 34 IPC based on the complaint lodged by the very same complainant. Therefore, for the very same set of allegations, there cannot be two FIRs. There is absolutely no material to charge the petitioner for any offence. Even according to the prosecution, there was a telephonic talk between the petitioner and one Shyam. There is no proof that the voice was that of the petitioner and one Shyam to attract any offence under IT Act. The petitioner was neither the admin of the whatsapp group nor a member of the said whatsapp group. Therefore, the petitioner did not post any audio message in the said group which is a private telephonic conversation. In fact, the person, who posted the said message is neither added as accused nor cited as witness.



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The respondent has no jurisdiction to register any FIR or to file a final report for the offence u/s 506(b) of IPC. Section 199(1) of Cr.P.C. bars the respondent herein to register FIR or file the final report. There is absolutely no material or statement recorded u/s 161(3) of Cr.P.C. to attract the offence u/s 506 and 509 of IPC. Further, there is no material to disclose prima facie case to attract an offence u/s 67 of the IT Act, since the entire allegation is only defamatory in nature, which is a non-cognizable offence. Further, it does not come under the purview of the obscenity as defined u/s 292(1) of IPC. Therefore, no charge is made out against the petitioner to prosecute the petitioner.

4. Per contra, learned Public Prosecutor appearing for the respondent would submit that in order to attract the offences, there are materials and the grounds raised by the petitioner can be considered only during the trial. Therefore, to file a final report, there are materials to attract offence u/s 501(b), 506, 509 of IPC r/w 34 of IPC and Section 67 of the IT Act. Hence, the Trial Court rightly dismissed the petition to discharge the petitioner and it does not warrant any interference by this Court. Accordingly, he prays for dismissal of the revision.



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5. Heard the learned counsel appearing for the parties and perused the materials available on record.

6. The case of the prosecution itself is that there was a telephonic conversation between the petitioner and one Shyam. It was recorded and posted in the said whatsapp group. There is no material to show that the petitioner was the one to post the said voice message in the said whatsapp group. Further, there is no proof that the voice was that of the petitioner to attract any of the offence under the IT Act. Further, the prosecution failed to examine any of the witnesses to prove that the voice message is that of the petitioner. The prosecution also failed to obtain any expert opinion to match the voice of the petitioner and the audio message.

7. Insofar as the offence u/s 501(b) of IPC is concerned, it is a non-cognizable offence and as per Section 199(1) of Cr.P.C., no Court shall take cognizance of an offence punishable under Chapter XXI of the IPC, except upon a complaint made by the persons aggrieved by the



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offence. Therefore, the respondent has no power/jurisdiction to register the FIR for the offence u/s 501(b) and 506(1) of IPC and also to file any final report. Further, for the very same set of allegations, the very same respondent registered another FIR in Crime No.3 of 2019 on 19.01.2019 for the very same offence. Hence, the present FIR cannot be sustained for the simple reason that two FIRs cannot be maintainable for the very same set of allegations and on the very same set of facts, which is in violation of Article 20, 21 and 22 of Constitution of India and also in violation of Section 300 of Cr.P.C.

8. On perusal of the statements recorded u/s 161(3) of Cr.P.C., no one has revealed that the petitioner had spoken the conversation with one Shyam and no one has revealed that the petitioner was the one to post the said voice message in the said whatsapp group. Further, there is no material to attract the offence u/s 506 of IPC. Accordingly, there may be an act of threatening by another person of causing injury to the person or causing destruction of any property of the person threatened or to the person to whom the property is entrusted, which amounts to criminal intimidation punishable u/s 506 of IPC.



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9. Even according to the case of the prosecution, it was the voice message between two private individuals and the same was posted in a whatsapp group. However, there is no material to attract the offence u/s 506 of IPC. It is relevant to extract Section 506 of IPC :-

“506. Punishment for criminal intimidation.---

Whoever commits, the offence of criminal intimidation shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both”

10. Thus, it is clear that in order to attract the offence u/s 509 of IPC, it is mandatory duty of the respondent to record statement u/s 164(5A) of Cr.P.C. from the victim as contemplated u/s 154 of Cr.P.C. Besides, the petitioner is neither admin of the said whatsapp group nor member of the group and the petitioner has not posted the said audio messages in the said group. In fact, the respondent did not even taken any steps to find out the person, who actually posted the said voice messages in the said group. Therefore, there is no material to attract offence u/s 509 of IPC.

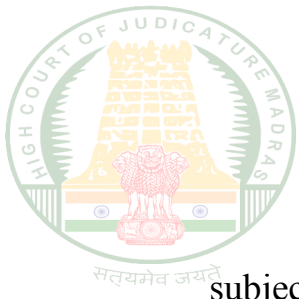


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11. Next, in order to attract the offence u/s 67 of IT Act, as per FIR, the voice message containing defamatory allegation as against the *de-facto* complainant, which is a non-cognizable offence. Therefore, it does not come under the purview of obscenity as defined u/s 292(1) of IPC and there is no material to attract offence u/s 67 of IT Act.

12. Further, the respondent filed an application before the Trial Court seeking permission for further investigation in Crime No.6 of 2018 and the same was allowed directing the respondent to file further report, if any on or before 29.08.2024 and subsequently, the time was extended till 24.09.2024. On 24.09.2024, the respondent filed a memo before the Trial Court stating that the *de-facto* complainant has not submitted the mobile phone and did not come forward to examine his wife and sister. Therefore, the investigating officer is unable to conduct further investigation and requested to treat the said request as further investigation request and close the same. Therefore, it can be seen that the *de-facto* complainant himself was not willing to come forward to submit his mobile phone for examination and also was not willing to



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subject his wife and sister for examination. Therefore, the complaint itself is nothing but a clear abuse of process of law. Hence, no charges were made out as against the petitioner. However, without considering the same, the Trial Court had mechanically taken cognizance of the charges framed against the petitioner. In view of the above, the impugned order passed by the Trial Court as against the petitioner cannot be sustained and the same is liable to be set aside.

13. Accordingly, the impugned order dated 24.10.2024 passed in Cr.M.P.No.2454 of 2024 in C.C.No.383 of 2023 is set aside and the petitioner is discharged from all the charges framed by the Trial Court against him.

14. In the result, the Criminal Revision Case is allowed.

30.06.2025

Index : Yes / No
Speaking order / Non-speaking order
NCC : Yes / No
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To

- 1.The Chief Judicial Magistrate, Puducherry.
- 2.The Inspector of Police, CBCID Police Station, Puducherry.



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G.K.ILANTHIRAIYAN, J.

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