



Crl.O.P.(MD)No.22235 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.10.2025

CORAM

THE HONOURABLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.(MD).No.22235 of 2024

and

Crl.M.P.(MD).No.13831 of 2024

1.Vellaisamy

2.Chinnaponnu

3.Thamilarasan

4.Gandhirajan

... Petitioner/Accused 1 to 4

Vs.

1.The State of Tamil Nadu Rep. by,
The Inspector of Police,
Sempatti Police Station,
Dindigul District.
(Crime No.313/2024)

... 1st Respondent/Complainant

2.Sivashalini

... 2nd Respondent/ Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 528 of BNSS, 2023, to call for the records pertaining to the final report filed by the respondent police in Crime No.313 of 2024 dated 30.09.2024 on the file of the Judicial Magistrate, Athoor, Dindigul and quash the same.

(Prayer amended as per order of this Court dated 24.09.2025 in Crl.M.P.(MD).No.13337 of 2025 in Crl.O.P.(MD).No.22235 of 2024)



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For Petitioners : Mr.P.Manikandan
For R-1 : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)
For R-2 : No appearance

ORDER

The petitioners seek to quash the impugned final report filed by the respondent Police in Crime No.313 of 2024 registered for the offences under Section 296(b), 105 and 351(2) of BNS, 2023 (corresponding to Section 294(b), 304 and 506(1) of IPC).

2. The allegation in the final report is that the defacto complainant's father and the first petitioner are brothers; that they had a property dispute; that on the date of occurrence, a wordy altercation took place between the petitioners and the family members of the defacto complainant; that knowing fully well that the defacto complainant's father was a sick person, the first petitioner pushed him, as a result of which, he fell down and subsequently died on the way to the hospital; that the petitioners had abused the defacto complainant, her father and others in filthy language besides committing the offence of criminal intimidation.



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3. The learned counsel for the petitioners would submit that the offence under Section 105 of BNS (corresponding to Section 304 of IPC) would not be made out as against any of the petitioners even if the allegations are accepted to be true; that the first petitioner may at best be liable for the offence under Section 115(2) of BNS (corresponding to Section 323 of IPC) and hence, the impugned final report for the offence under Section 105 of BNS cannot be sustained; and that the allegations would not attract the offences under Section 296(b) and 351(2) of BNS as there is nothing in the final report and the materials filed in support of the same to show that the accused had committed any obscene act or uttered obscene words to attract Section 296(b) of BNS or had made any real threat to attract Section 351(2) of BNS.

4. The learned Additional Public Prosecutor per contra submitted that the first petitioner had pushed the defacto complainant's father, which caused his death; that the question as to whether the offence under Section 105 of BNS is made out or not is factual and cannot be adjudicated in a quash petition; and that there are allegations against the other petitioners for commission of the offences under Section 296(b) and 351(2) of BNS; and that the impugned prosecution therefore cannot be quashed.



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5. Though notice has been served on the defacto complainant and her name is printed in the cause list, none has entered appearance.

6. As stated earlier, the defacto complainant's father and the first petitioner are brothers. There were disputes between the two families with regard to sharing of a property. On the date of occurrence, there was a wordy altercation and the first petitioner is said to have pushed the defacto complainant's father, which is said to have caused his death. There is no allegation that the other petitioners had common intention to cause the death of the defacto complainant's father. In fact, the final report does not state so. The alleged occurrence is said to have taken place during a sudden fight. Hence, this Court is of the view that the petitioners 2 to 4 cannot be charged and directed to face trial for the offence under Section 105 of BNS. The occurrence took place pursuant to the sudden fight. However, since there is an allegation against the first petitioner, the question as to whether the first petitioner has committed the offence under Section 105 of BNS or any other offence is for the Trial Court to decide and this Court is not inclined to adjudicate that question.



7. The petitioners 2 to 4 have been charged for the offences under Section 296(b) and 351(2) of BNS. It is well settled that in order to attract the offence under Section 296(b) of BNS (294(b) of IPC), the person must have done any obscene act in a public space or must have uttered obscene words etc., to the annoyance of others. The Hon'ble Supreme Court in the case of ***N.S.Madhanagopal and Another Vs. K.Lalitha*** reported in (2022) 17 SCC 818 has held as follows:

"8. It has to be noted that in the instant case, the absence of words which will involve some lascivious elements arousing sexual thoughts or feelings or words cannot attract the offence under Section 294(b). None of the records disclose the alleged words used by the accused. It may not be the requirement of law to reproduce in all cases the entire obscene words if it is lengthy, but in the instant case, there is hardly anything on record. Mere abusive, humiliating or defamative words by itself cannot attract an offence under Section 294(b) IPC.

9.To prove the offence under Section 294 IPC mere utterance of obscene words are not sufficient but there must be a further proof of 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 appellants-accused annoyed others, it cannot be said



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that the ingredients of the offence under Section 294(b) of IPC is made out."

8. Similarly, to attract the offence under Section 351(2) of BNS (506(1) of IPC), there must be a real threat. This Court, in the case of **Noble Mohandass vs. State** reported in **1989 Cri.Lj 669**, had held as follows:

"7. Further for being an offence under Section 506(2) which is rather an important offence punishable with imprisonment which may extend to seven years, the threat should be a real one and not just a mere word when the person uttering it does exactly mean what he says and also when the person at whom threat is launched does not feel threatened actually."

There is nothing in the final report to suggest real threat made by the petitioners 2 to 4. Therefore, this Court is of the view that the prosecution against the petitioners 2 to 4 is an abuse of process of law, hence liable to be quashed and accordingly quashed. The Trial Court may proceed with the trial against the first accused/first petitioner without being influenced by any of the observations in this order.

9. With the above observations, this Criminal Original Petition is partly allowed insofar as the petitioners 2 to 4 are concerned. The petition is



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dismissed insofar as the first petitioner is concerned. Consequently, connected miscellaneous petition is closed.

16.10.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
Lm

To

- 1.The Judicial Magistrate Court,
Athoor, Dindigul.
- 2.The Inspector of Police,
Sempatti Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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