

N. S. MADHANAGOPAL & ANR.

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v.

K. LALITHA

(Criminal Appeal No. 1759 of 2022)

OCTOBER 10, 2022

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**[S. ABDUL NAZEER AND J. B. PARDIWALA, JJ.]**

*Penal Code, 1860 – ss.294(b), 341 – When not attracted – Verbal altercation between parties on excessive flow of waste water in the society – Complaint filed by respondent for offences u/ss.294(b), 341 – Application filed by appellants for quashing of criminal proceedings, rejected by High Court – On appeal, held: All that has been averred in the complaint is that the appellant hurled unparliamentary words towards the complainant – s.294(b) talks about the obscene acts and songs – The test of obscenity u/s.294(b) is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences – Mere utterance of obscenity words not sufficient – There must be further proof to establish that it was to the annoyance of others, which is lacking in the present case – Mere abusive, humiliating or defamative words by itself cannot attract offence u/s.294(b) – In the present case, the absence of words which will involve some lascivious elements arousing sexual thoughts or feelings or words cannot attract the offence u/s.294(b) – No one spoke about the obscene words – In absence of legal evidence showing that the words uttered by the appellants annoyed others, the ingredients of the offence u/s.294(b) not made out – Further, averments in the complaint are not sufficient to even constitute the offence of wrongful restraint u/s.341 – No case made out against the appellants as alleged by the complainant – Impugned order set aside – Pending criminal proceedings quashed – Code of Criminal Procedure, 1973 – ss.482, 190(l), 204.*

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*Penal Code, 1860 – ss.294(b), 341 – Test of obscenity u/s.294(b); ingredients to constitute offence of wrongful restraint u/s.341 – Discussed.*

*Code of Criminal Procedure, 1973 – ss.190(l), 204 – Held: Taking cognizance of an offence u/s.190(l) and issue of process*

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- A *u/s.204 are judicial functions and require judicious approach – Issuance of process must be preceded by an application of judicial mind to the material before the court to determine if there is ground for proceedings against the accused – If the allegations made in the complaint are too vague and general without giving any material particulars of the offence alleged then the order of the Magistrate issuing process on the basis of the complaint would not be justified as there must be material prima facie, for issuance of process.*
- B *issuing process on the basis of the complaint would not be justified as there must be material prima facie, for issuance of process.*

*P. T. Chacko v. Nainan 1967 KLT 799 – approved.*

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No.

- C 1759 of 2022.

From the Judgment and Order dated 01.04.2022 of the High Court of Judicature at Madras in Crl. O.P. No. 5627 of 2019.

- S. Vallinayagam, M. A. Chinnasamy, Ms. C. Rubavathi, C. Raghavendren, M. Veera Ragavan, Ms. Kajal Singhal, Rajeev Gupta, D Advs. for the Appellants.

Dr. Zulfiqar Ali Khan, Ms. K. Bhuvaneswari, Ms. R. Sarala, Md. Shahid Anwar, Advs. for the Respondent.

The following Order of the Court was passed:

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### **O R D E R**

- 1. Leave granted.
- 2. This appeal is at the instance of the original accused Nos. 1 & 2 resply in a complaint lodged by the respondent herein before the Court of the Judicial Magistrate at Alandur, Tamil Nadu for the offences punishable under Sections 294(b) and 341 resply of the Indian Penal Code (For short “The IPC”) and is directed against the order passed by the High Court of Judicature at Madras dated 1st April, 2022 in Crl.O.P.No.5697 of 2019 by which the High Court declined to quash the criminal proceedings instituted by the respondent herein (original complainant). The High Court ultimately rejected the application filed by the appellants herein under Section 482 of the Code of Criminal Procedure (for short “The Cr.P.C.”).
- 3. It appears from the materials on record that the parties to this litigation are residing at one common enclave called the Sadagopan Enclave, Kannappan Street, Chromepeet Road, Nanmangalam, Chennai.

The respondent herein, the original complainant filed an application No.STC No.566 of 2018 in the Court of Judicial Magistrate at Alandur and prayed for an order of police investigation under Section 156(3) of the Cr.P.C. or to take cognizance under Section 200 of the Cr.P.C. On the fateful day of the incident, the parties entered into a verbal altercation on the issue of excessive flow of waste water in the society.

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4. We have gone through the entire complaint lodged by the respondent herein. We asked the learned counsel appearing for the respondent (original complainant) to take us to that part of the complaint which constitutes an offence. To put in other words, the necessary averments in the complaint disclosing the commission of the offence punishable under Sections 294(b) and 341 resp of the IPC.

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5. In the aforesaid context, our attention has been invited to the following paragraphs of the complaint which read as under:-

“3. The complainant humbly submits that she has been elected as a Treasurer for the Sadagopan Enclave Residents Association on 15.08.2017 which is a registered one and working for the welfare of the society along with the President, Secretary and four Executive members.

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4. The complainant further submits that the residents have been promised by the promoters about the sewage treatment plant, Gym, Kids Play Park, Roads, etc., as early as possible. Now the project has completed it’s eight years and still there were seven houses not yet registered. The waste water is going into the lands belonging to the land owners and nearby land for the past eight years. Two years before the adjacent land owner on north side objected for the flow of waste water which made to take a decision to control the flow and keep it onto the lands of land owners only. The land owners had accepted to the office bearers of 2016-17 to dig their land with the help of JBC and the waste water had run into that said lands.

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5. The complainant further submits that the Current Office Bearers have received a continuous and constant complaint from the residents adjacent to the septic tank about the excessive flow of waste water and the said office bearers have tried to control the water flow by Using 21 round cement stones into the earth and the maximum water flow is going outside. But the said residents

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- A were not at all satisfied and reported in the whatsapp that reptiles are coming to their house due to the septic tank and wanted to bulk sewage treatment plant. In the society meetings of the previous office bearers, the STP quotation is 35 lakhs which was refused by the society members i.e. residents.
- B 6. The complainant further submits that mean while the resident of Plot No. 7F adjacent to the septic tank has tried to level and build some construction work in the STP area and the necessary materials were supplied and kept in the common STP area, it was opposed by all the residents but the said resident has argued that he is the man aggrieved and he is having the land over there as per his legal documents. The current office bearers replied that as per the construction agreement of all the residents, no one shall change the elevation outer colour scheme of the building, and shall alter or permit to be altered the flat to be constructed. But the said resident refused to remove the materials even after the police advice. The said resident has complained to the police officials (Mr. Elango) about the waste water flow and subsequently the said police official advised the officer bearers for sending the waste water by laying the PVC pipes. On the next day i.e. 16.04.2018 at 4:30 pm, when the work of laying of the PVC pipes was being carried out, the residents enquired about the same and later one of the land owners, namely Mr. Madanagopal spoke unparliamentary words towards the workers. The workers thereafter informed Miss Lalitha (Treasurer) about this. She rushed to the spot and the said land owner once again used the unparliamentary words and was prepared to beat her. The security and the workers protected Miss Lalitha and she had no leave as there was no other option. The police was informed that Mr. Madanagopal had uttered unparliamentary words and admitted such utterance that led to the lodging of the police complaint on 17.04.2018 against Mr. Madanagopal, his wife Ms. Suseela, his cousin sister Ms. Sarala (who resided outside the Sadagopan enclave), Mr. Partha Dass, his wife Ms. Lopamudra and Mr. Venkatesh.”
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- H Thus, all that has been averred in the complaint is that the appellant Madanagopal hurled unparliamentary words towards the complainant.

[Emphasis supplied]

6. Section 294(b) of the IPC talks about the obscene acts and songs. Section 294 of the IPC as a whole reads thus:

“294.Obscene acts and songs - Whoever, to the annoyance of others -

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

(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, or with both.”

7. It is to be noted that the test of obscenity under Section 294(b) of the I.P.C. is whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences. The following passage from the judgment authored by Justice K.K. Mathew (as his Lordship then was) reported in *P.T. Chacko v. Nainan* (1967 KLT 799) explains as follows:

“The only point argued was that the 1st accused has not committed an offence punishable under Section 294(b) IPC., by uttering the words above-mentioned. The courts below have held that the words uttered were obscene and the utterance caused annoyance to the public. I am not inclined to take this view. In the Queen v. Hicklin, [L.R.] 3 Q.B. 360 at 371 Cockburn C.J. laid down the test of ‘obscenity’ in these words:

“..... the test of obscenity is this, whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences” This test has been uniformly followed in India. The Supreme Court has accepted the correctness of the test in *Ranjit D. Udeshi v. State of Maharashtra*, AIR 1965 SC 881. In *Samuel Roth v. U.S.A.*, 354 US 476 (1957), Chief Justice Warren said that the test of ‘obscenity’ is the “substantial tendency to corrupt by arousing lustful desires”. Mr. Justice Harlan observed that in order to be ‘obscene’ the matter must “tend to sexually impure thoughts”. I do not think that the words uttered in this case have such a tendency. It may be that the words are defamatory of the complainant, but I do not think that the words are ‘obscene’ and the utterance would constitute an offence punishable under S. 294(b) IPC”.

- A        8. It has to be noted that in the instance 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. To prove the offence under Section 294 of IPC mere utterance of obscenity words are not sufficient but 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 appellants accused annoyed others, it can not be said that the ingredients of the offence under Section 294 (b) of IPC is made out.

9. Section 341 of the IPC talks about punishment for wrongful restraint. Section 341 reads thus:

“341. Punishment for wrongful restraint - Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees or with both.”

- E        10. The complaint also fails to disclose the necessary ingredients to constitute the offence of wrongful restraint. In order to attract application of Section 341 which provides for punishment for wrongful restraint, it has to be proved that there was obstruction by the accused; (ii) such obstruction prevented a person from proceeding in a direction F to which he had a right to proceed; and (iii) the accused caused such obstruction voluntarily. The obstructor must intend or know or would have reason to believe that the means adopted would cause obstruction to the complainant.

- G        11. The averments made in the complaint according to us are not sufficient to even constitute the offence of wrongful restraint. In the overall view of the case, we are convinced that no case is made out against the appellants herein as alleged by the complainant.

- H        12. Taking cognizance of an offence under Section 190(1) of the Cr.P.C. and issue of process under Section 204 are judicial functions and require a judicious approach. This is a proposition not only based on

sound logic but is also based on fundamental principles of justice, as a person against whom no offence is disclosed cannot be put to any harassment by the issue of process. Issuance of process must be preceded by an application of judicial mind to the material before the court to determine if there is ground for proceedings against the accused. When the allegations made in the complaint are found to be too vague and general without giving any material particulars of the offence alleged against the accused then the order of the Magistrate issuing process on the basis of the complaint would not be justified as there must be material *prima facie*, for issuance of process. We have our own doubts whether even the verification of the original complainant on oath was recorded before taking cognizance and issuing process.

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13. In the result, the impugned order is set aside and the criminal proceedings of STS No. 566 of 2018 pending in the court of Judicial Magistrate, Alandur, Tamil Nadu are hereby quashed. Therefore, the appeal succeeds and is accordingly allowed.

Divya Pandey  
(Assisted by : Deepak Panwar, LCRA)

Appeal allowed.