

Crl.O.P.(MD)No.11848 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)No.11848 of 2020

and

Crl.M.P.(MD)Nos.5454 and 5457 of 2020

M.Srinivasan

... Petitioner

Vs.

1.State through
The Inspector of Police,
Thriumangalam Town Police Station,
Madurai District.

2.Neka

... Respondents

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the entire case records in C.C.No.7 of 2020 on the file of the learned Judicial Magistrate, Thirumangalam, Madurai District pertaining to the case in Crime No.262 of 2019 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.SS.Madhavan

For Respondents : Ms.S.E.Veronica Vincent,
Govt. Advocate (Crl. Side) for R1

ORDER

Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. Side) appearing for the first respondent.

2.The petitioner is figuring as an accused in C.C.No.7 of 2020 on the file of the Judicial Magistrate, Thirumangalam, for the offences under Sections 294(b) and 506(i) of I.P.C. and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002. The petitioner is the owner of a lodge. It appears that the second respondent had stayed in one of the rooms of the lodge owned by the petitioner herein.

3.The case of the defacto complainant is that on the occurrence date, the petitioner had barged into her room and when the same was questioned, the petitioner abused her in filthy language.

4.The learned counsel appearing for the petitioner reiterated all the contentions set out in the memorandum of grounds.

5. But then, as rightly pointed out by the learned Government Advocate (Crl. Side), they are essentially factual in nature and this Court while exercising its jurisdiction under Section 482 of Cr.P.C., may not be in a position to go into the same.

6. Finally the petitioner's counsel contended that admittedly the defacto complainant is a transgender person and that therefore it is not open to the prosecution to invoke the provisions of Tamil Nadu Prohibition of Harassment of Women Act, 2002.

7. In response thereto, the learned Government Advocate (Crl. Side) drew my attention to the decision of this Court made in *Arunkumar Srija Vs. Inspector General of Registration*. This Court following the judgment of the Hon'ble Supreme Court report in (2014) 5 SCC 483 (*National Legal Services Authority Vs. Union of India*) had held that it is entirely for the transgender person to self-identify her gender and that this self determination cannot be questioned by others.

8. In the case of hand, the defacto complainant/Neka views herself as a woman. Therefore, the prosecution rightly accepted the said

self identification and registered the case under Tamil Nadu Prohibition of Harassment of Women Act, 2002. Therefore, I find no merit in the contention of the petitioner's counsel that invocation of Tamil Nadu Prohibition of Harassment of Women Act, 2002, is not maintainable. However, all the other defences of the petitioner are left open. Considering the facts and circumstances of the case, the personal appearance of the petitioner before the Court below is also dispensed with. However, the petitioner will have to be represented by his counsel. If the counsel also fails to appear, the benefit of this order will get automatically vacated. The criminal original petition is dismissed. I make it clear that I have not gone into the merits. Excepting the aforesaid legal contention, all the other defences of the petitioner can very well be urged by the petitioner before the Court below. Consequently, connected miscellaneous petitions are closed.

सत्यमेव जयते

28.10.2020

Index:Yes/No
Internet:Yes/No
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To:-

- 1.The Judicial Magistrate,
Thirumangalam.
- 2.The Inspector of Police,
Thriumangalam Town Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.R.SWAMINATHAN, J.

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