

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on: 20.09.2017

Pronounced on: 05.06.2018

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

CRL.O.P.(MD)No.3110 of 2017

and

CrI.M.P.(MD) Nos. 2366 and 6773 of 2017

- 1.I.Linga Bhaskar
- 2.D.Maria Antony Pitchiah
- 3.D.M.A.F.Suresh
- 4.P.Muruga Perumal
- 5.N.Jeyaraj
- 6.P.Ramanathan
- 7.K.Sivasailam
- 8.S.Amirthselvi
- 9.A.Manikandan
- 10.S.J.Celina
- 11.G.Visalakshi
- 12.S.Mariappan
- 13.G.Ravi
- 14.P.Ramachandran
- 15.Mohideen Abdul Khadar
- 16.S.Bharathi
- 17.A.Muthurajan Caleb
- 18.V.Murugan
- 19.G.Suresh
- 20.A.Devaki
- 21.A.Ratna
- 22.T.Buvanewari
- 23.K.Gandhimathi
- 24.D.Simon
- 25.T.Ratharukmani

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- 26.D.Sam
27.S.Thangalingam
28.A.Shahira Rahmath
29.P.Rengarajan
30.C.Jegatheesan
31.T.Rajaram
32.T.Iyappan
33.G.Sinduja
34.T.Arumugasamy
35.H.Athilsha Ali
36.R.Sivakumar
37.N.Shanmugasundaram
38.S.Vettivel
39.A.Arockiamary
40.G.Jeyaraman
41.M.Arumugam
42.S.Sankara Subramanian
43.V.Shirmela
44.G.Vijayalakshmi
45.G.Arivalagan
46.Y.Alexander Fleming : Petitioners / Accused No.1 to
19, 21 to 27, 29 to 31, 33 to 49

-Vs-

- 1.The State through the Inspector of Police,
Thoothukudi South Police Station,
Thoothukudi, under Cr.No.206 of 2017
: 1st Respondent / Complainant
2.Vijayalakshmi : 2nd Respondent / De-facto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records pertaining to the FIR in Crime No.206 of 2017 on the file of the First respondent police and to quash the same as illegal as far as

Accused No.1 to 19, 21 to 27, 29 to 31, 33 to 49 are concerned.

For Petitioner : Mr.Isaac Mohan Lal
Senior Counsel

For Respondent 1 : Mr.K.Anbarasan
Government Advocate (Crl.Side)

For Respondent 2 : Mr.G.Prabhu Rajadurai

ORDER

The above Criminal Original Petition is filed to call for records pertaining to FIR in Crime No.206 of 2017 on the file of the first respondent police and to quash the same.

2.The petitioners in the Criminal Original Petition are accused 1 to 19, 21 to 27, 29 to 31, 33 to 49 as per the complaint.

3.The brief facts that are necessary for the purpose of disposing of this petition are as follows:

3.1.All the petitioners are working in BSNL

Department and the second respondent / de-facto complainant is also in BSNL Department as Divisional Engineer (Rural). It is stated that the petitioners as well as the second respondent are all members of an official whatsapp group.

3.2.It is admitted that the official whatsapp group was intended to be used by the members for sharing of any innovative works / ideas for improving the quality of service of BSNL.

3.3.It is admitted that the second respondent has posted the video footage of three customers who have spoken about their grievance about the BSNL coverage. It appears that the petitioners are mainly indoor staff of BSNL whereas the second respondent is an officer engaged as an outdoor staff. Since the conversation uploaded by the copy second respondent was taken as an act to degrade the indoor staff, the petitioners and few others have posted an emoji, namely, a smiling face with tears. Some of the petitioners felt that the conversation

uploaded by the second respondent is likely to de-motivate the executives and is likely to tarnish the image of BSNL, they requested the members of SNEA by sending similar emojis in the whatsapp group to be shared by other members of the group. Following this, the petitioners who are the accused in the complaint have posted the same emoji, a cartoon face with joy but tears in the eyes. Annoyed by this, the second respondent gave a complaint.

3.4. In the complaint, the second respondent has stated that her husband is a practicing Advocate in Tuticorin District for more than 25 years and that she has two children. She further described herself as a Divisional Engineer (Rural) in BSNL. She states in her complaint that she was also inducted as a member of whatsapp group which was intended to share the complaints and deficiencies in the service of BSNL and to rectify them and improve the quality of service. The second respondent further stated in her complaint that as per the instructions of her superiors only, the recorded video of three of BSNL customers in

relation to BSNL coverages was uploaded by her in the said whatsapp group. The allegations in the complaint is that the recorded conversation of BSNL customers uploaded by her is wrongly understood by the petitioners as one to degrade their efficiency and that they started retaliating the complainant and did this with an intention to humiliate her by posting the annoying emojis one after another. It is further stated that the accused 1 and 2 and other petitioners have conspired together and posted the smiley faces with tears through whatsapp against the second respondent. Since the meaning of the emoji is laughing till you cry, the second respondent described the posting of crying smiley faces in the whatsapp group as a most annoying thing intended to humiliate the second respondent. In the complaint, she further referred to the further messages sent by some of the petitioners requesting all members to send the same smiley face. It is further stated in the complaint that because of the posting of crying smiley faces against the second respondent, she was put to mental agony and hence, she could not sleep and she was crying all the night on 31.07.2016. In the

complaint, the petitioners 1 and 2 were shown as persons who have induced other members to post crying smiley faces with an intention to humiliate the second respondent. The details of posting of such emojis by other petitioners was given in the complaint. A case was registered for offences punishable under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002, Section 3 (1)(r), 3(1)(t), 3(1)(u) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 and Section 67 of Information Technology Act. Challenging the First Information Report, which is registered in Crime No. 206 of 2017 on the file of the first respondent, the above Criminal Original Petition is filed.

4.The petitioners have stated that the second respondent had earlier preferred a complaint before the Superintendent of Police which was referred to the District Crime Branch, Tuticorin. It is further stated that after summoning all the 29 persons, who are shown as accused, the Superintendent of Police, Crime Branch, found that no

cognizable offence is made out. It is the case of the petitioners that the emojis had been posted in response to the video posted by the second respondent in the whatsapp group showing their disapproval but not to defame or humiliate the second respondent. Learned Senior Counsel appearing for the petitioners submitted that the posting of crying smiley faces were to express their feelings in response to video footage and that it is not intended to harm the individual.

5. The learned Senior Counsel appearing for the petitioners submitted that from the reading of the complaint no offence under Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002, is attracted. It is further submitted that the entire case as per the complaint do not attract Section 3 (1)(r), 3(1)(t), 3(1)(u) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 and Section 67 of Information Technology Act, 2000. Since the emoji – a laughing face with tears shows mere expression of the petitioners' feeling in response to a video footage uploaded by

the second respondent, this cannot be taken so seriously. It is further stated that the petitioners have not committed any offences as alleged in the complaint. It is also submitted by the learned counsel appearing for the petitioners that the second respondent herein had already ventilated her remedy by way of departmental proceedings and by forwarding a complaint to the Scheduled Caste and Scheduled Tribes Protection Wing. It is further submitted that the authorities concerned have categorically found that no *prima facie* case is found on the complaint of the de-facto complainant. The petitioners relied upon the communication from the General Manager, Tuticorin, addressed to the de-facto complainant dated 11.01.2017 in response to her complaint against the petitioners.

6.The learned counsel appearing for the second respondent, however, submitted that the emoji posted by the petitioners is a face with tears of joy which is understood by the public as a most annoying emoji. It is the contention of the learned counsel appearing for the second respondent that lots of

smileys have definite meaning and the face with tears of joy was to convey hatred and to humiliate the second respondent.

7. In this case, a face with tears of joy was posted by the petitioners who are all members of a whatsapp group in response to the video footage that was uploaded by the second respondent. It is admitted that the emojis are posted to convey numerous feelings. It is stated that emoji is used when something is funny or laughable. In the present context, where the petitioners and the second respondents are members of the same whatsapp group and they are all employees of BSNL, the question is whether the petitioners have committed the offence alleged against them. When it is accepted that an emoji is sent to express ones feeling about something, it cannot be treated as an overt act on others. It is a comment may be intended to ridicule or to show one's disapproval in a given context. Section 67 of Information Technology Act reads as follows:

“67. Publishing of information which is obscene in electronic form. - Whoever publishes or transmits or causes to be published in the electronic form, any material which is lascivious or appeals to

the prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it, shall be punished on first conviction with imprisonment of either description for a term which may extend to five years and with fine which may extend to one lakh rupees and in the event of a second or subsequent conviction with imprisonment of either description for a term which may extend to ten years and also with fine which may extend to two lakh rupees.”

8. From the reading of Section 67 of Information Technology Act, it can be seen that this provision prohibits publication of information that is obscene in electronic form. The prohibition against the obscenity as contemplated under Section 67 of the Information Technology Act in public interest is violated only when a person publishes or transmits any material which is lascivious or appeals to prurient interest or if its effect is such as to tend to deprave and corrupt persons who are likely to read, see or hear the matter contained in those materials. In this case, certainly, the allegations do not indicate any publication of obscene material which is lascivious or appeals to prurient interest. The object of Section 67 of Information Technology Act is, therefore, about a publication revealing a over

sexual interest or desire or encouraging an excessive interest in sexual matters. Hence, this Court is of the clear opinion that the complaint do not disclose an offence under Section 67 of the Information Technology Act.

9. Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, reads as follows:

"Section 4: Penalty for harassment of woman: Whoever commits or participates in or abets harassment of woman in or within the precincts of any educational institution, temple or other place of worship, bus stop, road, railway station, cinema theatre, park, beach, place of festival, public service vehicle or vessel or any other place shall be punished with imprisonment for a term which may extend to three years and with fine which shall not be less than ten thousand rupees."

10. First of all, there should be harassment and such harassment should be within the places which are indicated in Section 4 of the Act. Harassment of women is defined under Section 2(a) of the Act. Harassment means any indecent act or by a man which causes or is likely to cause intimidation, fear,

shame or embarrassment, including abusing or causing hurt or nuisance or assault or use of force. The Act is intended to punish person who does something in order to outrage women's modesty. In several decisions of the Hon'ble Supreme Court, harassment of women has been dealt with. The allegation is about the posting of an emoji in a whatsapp group shared by the group of persons. The posting of emoji is to express ones feeling. It is an act that may offend the second respondent but that is not an act attracting Section 4 of the Tamil Nadu Prohibition of Harassment of Women Act, 1998.

11. Finally, the question is whether the complaint makes out a case under Section 3(1)(r)(t)(u) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. Though it is stated in the complaint that the second respondent belongs to a community listed under the provisions of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Act, 2015 and the provisions can be applied, the allegations made in the complaint do not attract Section 3(1)(r)

or 3(1)(t) or 3(1)(u) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. In this case, it is not the case in the complaint that the smiley was intended to humiliate the second respondent for she being a member of Scheduled Caste / Scheduled Tribes. In such circumstances, this Court is unable to find any reason to sustain the complaint as one attracting the provisions of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015. It is also admitted in this case that some of the petitioners belong to SC/ST community. The reading of the entire contents of the FIR and the allegations made against the petitioners do not attract Section 3(1)(r), 3(1)(t), 3(1)(u) of Scheduled Caste and Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015.

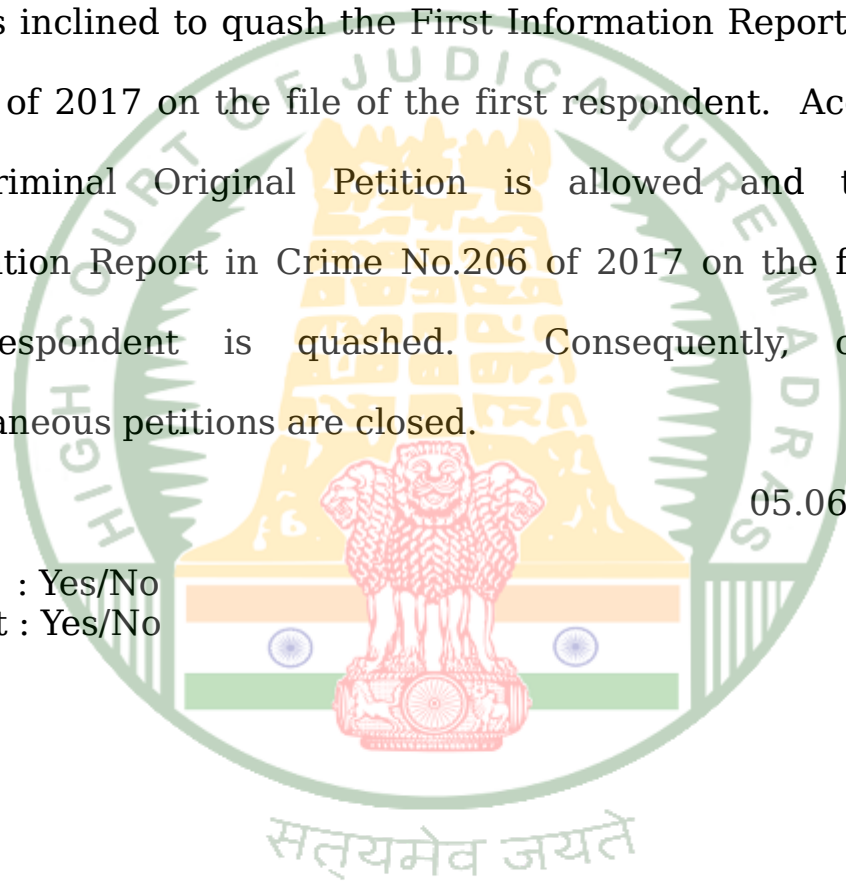
12. When no cognizable offence is found on the face of the complaint, this Court is of the view that the First Information Report is liable to be quashed. In the case on hand the petitioners and the second respondent are the members of a

whatsapp group. Everyone has a right to express their feelings and share their idea. The face of crying smiley is to comment about the idea of second respondent in publishing or uploading a video of complaints made by BSNL customers regarding deficiencies in BSNL coverage. Every person has got indefeasible right to express what he feels. The petitioners who are working as executives and staff of BSNL along with second respondent ought not to have indulged in posting such emoji in the interest of BSNL since whatsapp group is formed to promote team spirit. Such complaints by the second respondent who is working as a Divisional Engineer (Rural) will pave way for other complications and friction among members which will be detriment to the interest of BSNL. This Court wanted the petitioners to express their regret as the de-facto complainant in her individual perception felt offended by the posting of such crying smiley. Accordingly the first petitioner has filed an affidavit on behalf of all the petitioners, recording their regret for posting such smileys. The matter should rest here and it will be neither in the interest of justice to permit such complaints to

stay. When the complaint does not disclose any offence as indicated above, the petitioners will be put to serious prejudice and hardship in case they are forced to face trial. Hence, this Court is inclined to quash the First Information Report in Crime No.206 of 2017 on the file of the first respondent. Accordingly, this Criminal Original Petition is allowed and the First Information Report in Crime No.206 of 2017 on the file of the first respondent is quashed. Consequently, connected miscellaneous petitions are closed.

05.06.2018

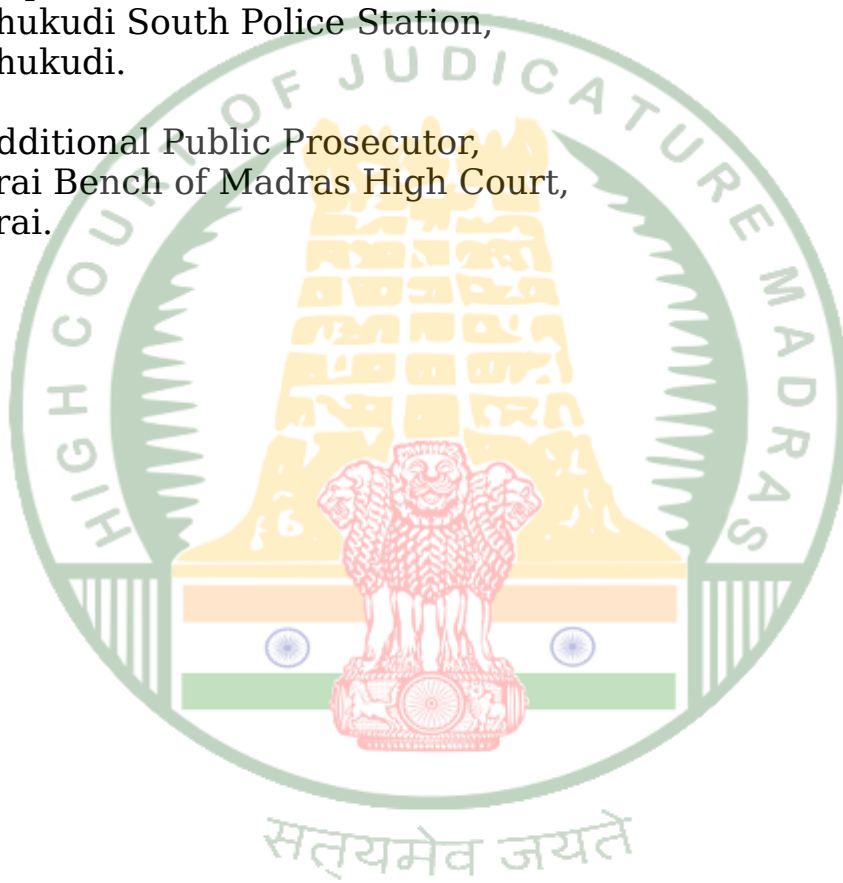
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To

- 1.The Inspector of Police,
Thoothukudi South Police Station,
Thoothukudi.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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S.S.SUNDAR, J.

SRM



Order made in
CRL.O.P.(MD)No.3110 of 2017

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