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Crl.O.P.No.3694 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 11.04.2023

Pronounced on : 18.04.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Crl.O.P.No.3694 of 2021

and

Crl.M.P.Nos.4172 and 4174 of 2022

1.Kanniyan Ramadoss @ Kaliyappan

2.Sivadoss @ Kovan

...Petitioners/A1 and A2

Vs.

State represented by

The Inspector of Police

Cyber Crime Cell

Central Crime Branch

Vepery, Chennai – 600 007.

...Respondent/Defacto complainant

PRAYER: Criminal Original Petition has been filed under Section 482 of the Criminal Procedure Code, to call for final report dated 17.12.2020 in CC No.1995 of 2020, on the file of the Learned Chief Metropolitan Magistrate, Egmore, Chennai and quash the final report.



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CrL.O.P.No.3694 of 2021

For Petitioners : Mr.N.R.Elango

Senior Counsel

for M/s.Jim Raj Milton

For Respondent : Mr.A.Damodaran

Additional Public Prosecutor

ORDER

The petition is to quash the final report in CC.No.1995 of 2020 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai, for the alleged offences under Sections 124A, 153, 505(1) (b) & (c) IPC.

2. It is alleged in the final report that when the defacto complainant was browsing the Internet, she came across the website vinavu.com URL <http://www.vinavu.com/2015/10/01/all-pervading-liquor-pala-song/>; that she found videos containing obnoxious songs with provocative lyrics which expressed hatred against the State of Tamil Nadu criticising its prohibition policy besides caricatures of the Chief Minister showing her as if she was supplying liquor to the innocent drunkards and feeding a child in her lap with a liquor bottle.



3. Mr.N.R.Elango, the learned Senior Counsel for the petitioners, submitted that the lyrics and the alleged caricatures only criticised the elected executive head of the State and cannot be termed as an act against the State itself. The learned Senior Counsel submitted that even if the allegations are accepted to be true, they do not attract the offences alleged. The learned Senior Counsel relied upon the Judgments of the Honourable Supreme Court in (a) ***Vinod Dua vs. Union of India and others*** reported in ***2021 SCC online SC 414*** and (b) ***Kedar Nath vs. State of Bihar*** reported in ***AR 1962 SC 955***.

4. Mr.A.Damodaran, the learned Additional Public Prosecutor appearing for the respondent, submitted that the lyrics composed by the petitioners were done with the malafide intention to cause irreparable damage to the Government Establishment by Law; that after the accused circulated this obnoxious videos, there were incidents of attack on TASMACH shops in various parts of the State; and that the act of the accused to cause hatred and excite disaffection towards the Government attracted the offences charged against them. Hence, he prayed for the dismissal of the quash petition.



5.This Court, on perusal of the impugned final report finds that the allegation is that the petitioners have criticised the Government's Prohibition Policy and had portrayed the Chief Minister in bad taste. However, the question is whether such an act would constitute the offences alleged. The Honourable Supreme Court in ***Vinod Dua vs. Union of India and others*** reported in ***2021 SCC online 414*** held as follows:

“56.These passages elucidate what was accepted by this Court in preference to the decisions of the Privy Council in Balagangadhar Tilak and in King-Emperor v. Sadashiv Narayan Bhalerao. The statements of law deducible from the decision in Kedar Nath Singh are as follows:

a) “the expression “the Government established by law” has to be distinguished from the persons for the time being engaged in carrying on the administration. “Government established by law” is the visible symbol of the State. The very existence of the State will be in jeopardy in the Government established by law is subverted.”

b) “any acts within the meaning of Section 124-A which have the effect of subverting the Government by bringing that Government into contempt or hatred, or creating disaffection against it, would be within the penal



statute because the feeling of disloyalty to the Government established by law or enmity to it imports the idea of tendency to public disorder by the use of actual violence or incitement to violence”.

c) “comments, however strongly worded, expressing disapprobation of actions of the Government, without exciting those feelings which generate the inclination to cause public disorder by acts of violence, would not be penal.”

d) A citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder.”

e) The provisions of the Sections read as a whole, along with the explanations, make it reasonably clear that the sections aim at rendering penal only such activities as would be intended, or have a tendency to create disorder or disturbance of public peace by resort to violence.”

f) “It is only when the words, written or spoken, etc. which have the pernicious tendency or intention of creating public disorder or disturbance of law and order that the law steps in to prevent such activities in the interest of the public order.”



g) “we propose to limit its operation only to such activities as come within the ambit of the observations of the Federal Court, that is to say, activities involving incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace.”

57.As the statement of law at the placetum (e) above indicates, it applies to cases under Sections 124-A and 505 of the IPC. According to this Court only such activities which would be intended or have a tendency to create disorder or disturbance of public peace by resort to violence are rendered penal.”

The above observations make it clear that unless the act of the petitioners was intended to incite violence or create public disorder, the said act would not attract the offences mentioned in Sections 124-A and 505 IPC. Merely because there were few incidents of attack on TASMACH shops, it cannot be said that the act of the petitioners was intended to cause disturbance to public order or public tranquillity. In the instant case, there is nothing in the impugned final report suggesting that the petitioners acted with that intention. The songs and the caricatures, at best were expressions of criticism of the actions of the persons in administration. For the same reasons, the offence under Section 153 IPC



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is also not made out. The act of the petitioners which criticises the persons in administration cannot be said to have pernicious tendency or intention of creating public disorder or disturbance to law and order. Hence, this Court is of the view that the offences alleged are not made out.

6. For the above reasons, the impugned final report is quashed. Accordingly, the Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed.

18.04.2023

dk

NCC: Yes/No

Index: Yes/No

Speaking/Non Speaking Order



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To

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1.The Chief Metropolitan Magistrate,
Egmore,
Chennai.

2.The Inspector of Police
Cyber Crime Cell
Central Crime Branch Vepery
Chennai – 600 007.

3.The Public Prosecutor
High Court of Madras
Chennai – 600 104.



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CrI.O.P.No.3694 of 2021

SUNDER MOHAN. J,
dk

Pre Delivery Order in
CrI.O.P.No.3694 of 2021
and

CrI.M.P.Nos.4172 and 4174 of 2022

18.04.2023