



Crl.O.P.No.14805 of 2021

In the High Court of Judicature at Madras

Reserved on : 10.7.2023	Delivered on : 14.7.2023
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Coram :

The Honourable Mr.Justice N.ANAND VENKATESH

Criminal Original Petition No.14805 of 2021
& Crl.M.P.No.8046 of 2021

S.Ve.Shekher

...Petitioner

Vs

1.The State rep.by the Inspector
of Police, Cyber Crime Cell,
Central Crime Branch,
No.132, Commissioner Office
Building, EVK Sampath Road,
Vepery, Periyamet, Chennai-7.

2.C.Rajarathinam

(R2 impleaded as per order of Court dated 17.9.2021
vide Crl.M.P.No.8650 of 2021 by MNKJ)

...Respondents

PETITION under Section 482 of the Criminal Procedure Code to
call for the records in C.C.No.23 of 2021 on the file of the learned
Assistant Sessions Judge, Additional Special Court for Trial of Cases
relating to MPs and MLAs, Singaravelar Maligai, Chennai-1 and quash
the same against the petitioner.



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For Petitioner : Mr.M.Venkatesh
For Respondent-1 : Mr.M.Babu Muthu Meeran,
Additional Public Prosecutor
Respondent-2 : Served and no appearance

ORDER

This criminal original petition has been filed under Section 482 of the Criminal Procedure Code (for short, the Code) to quash the proceedings in C.C.No.23 of 2021 pending before the learned Assistant Sessions Judge, Additional Special Court for Trial of Cases relating to MPs and MLAs, Singaravelar Maligai, Chennai-1.

2. A complaint came to be given by the second respondent herein before the first respondent - Police to the effect that the petitioner had released a video on 03.8.2020 on his youtube channel and made objectionable remarks with an intention of spreading false information against the then Chief Minister of Tamil Nadu and also insulted the national flag to incite communal violence in the State. Based on the said complaint, a first information report came to be registered in Cr.No.260 of 2020 on the file of the first respondent for an offence under Section 2 of the Prevention of Insults to National



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Honour Act, 1971 (for brevity, the Act). The investigation was taken up by the first respondent and a final report came to be filed before the Court below and it was taken cognizance in C.C.No.23 of 2021. In the above criminal original petition, the proceedings before the Court below has been put to challenge by the petitioner.

3. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the first respondent. Though the second respondent has been served and his name printed in the cause list, he does not choose to appear before this Court either in person or through a counsel.

4. The main allegation that has been put against the petitioner is that he made certain remarks in the video and for proper appreciation, the same are extracted as hereunder :

"அப்போ தேசியக் கொடி நமக்கு களங்கமா தேசியக் கொடி களங்கம்தான் முதலமைச்சர் சொல்லுங்க அந்த களங்கமான தேசியக் கொடியை தான் முதல்வர் ஆகஸ்ட் 15-ல் ஏற்றப் போகிறாரா இல்ல காவிய மாத்திரம் கட் பண்ணிட்டு வெள்ளையும் பச்சையும் அதாவது கிறிஸ்துவர் முஸ்லீம்ஸ் போதும் இந்துக்கள் வேண்டாம் அப்படிக்குற முடிவுக்கு நீங்களும் வந்து இருக்கீங்க."



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5. The only issue to be decided is as to whether the above remarks made by the petitioner will constitute an offence under Section 2 of the Act.

6. For proper appreciation, Section 2 of the Act is extracted as hereunder :

"Insult to Indian National Flag and Constitution of India :-

Whoever in any public place or in any other place within public view burns, mutilates, defaces, defiles, disfigures, destroys, tramples upon or otherwise shows disrespect to or brings into contempt (whether by words, either spoken or written, or by acts) the Indian National Flag or the Constitution of India or any part thereof, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both."

7. For any act to be termed as an offence under Section 2 of the Act, *actus reus* and *mens rea* should be established. The *actus reus* being any of the actions in Section 2 and Explanation-4 and the *mens rea* being the intention to disrespect or contempt.

8. For the issue as to what constitutes an offence, the decisions of the Apex Court and various High Courts were taken into consideration in the decision rendered by me in the case of ***State rep.***



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by the Inspector of Police, B 12 Police Station, Coimbatore Vs.

D.Senthilkumar [reported in 2021 (1) LW (Crl.) 652]. After analysing all the judgments, I came to the conclusion that the intention to commit the offence i.e. to cause insult, show disrespect or to bring into contempt towards the national flag, is placed at a very high threshold and such intention must be so mala fide and apparent to attract an offence under Section 2 of the Act.

9. In the instant case, the petitioner had commented upon a statement made by the then Chief Minister of Tamil Nadu deprecating the statue of late Chief Minister of Tamil Nadu namely Mr.M.G. Ramachandran adorned with a saffron colour shawl. The petitioner had stated that if the saffron colour was to be deprecated, did it mean that the then Chief Minister of Tamil Nadu wanted only white and green colours to be present in the national flag, which indicates Christians and Muslims of this country.

10. In other words, the petitioner was attempting to tell the then Chief Minister of Tamil Nadu that the three colours in the national flag represent three religions namely saffron representing the Hindus,



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white representing the Christians and green representing the Muslims and if such an objection was made for the saffron colour, the petitioner questioned as to whether, for the then Chief Minister of Tamil Nadu, only white and green colours in the national flag were acceptable.

11. In the considered view of this Court, even if the averments made in the complaint are accepted at their face value, the same do not constitute an offence within the meaning of Section 2 of the Act. The statement made by the petitioner does not fall under any of the actions in Section 2 and Explanation-4 and therefore, there is no actus reus. Similarly, the statement made by the petitioner also does not show any disrespect or contempt towards the national flag and hence, mens rea is also absent. In view of the same, the offence under Section 2 of the Act is not made out.

12. In the light of the above discussions, the continuation of the proceedings against the petitioner in C.C.No.23 of 2021 on the file of the Court below will be an abuse of process of court, which requires interference of this Court in exercise of its jurisdiction under Section 482 of the Code.



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13. In the result, the proceedings in C.C.No.23 of 2021 on the file of the learned learned Assistant Sessions Judge, Additional Special Court for Trial of Cases relating to MPs and MLAs, Singaravelar Maligai, Chennai-1 shall stand quashed and the above criminal original petition is allowed. Consequently, the connected Crl.M.P. is closed.

14.7.2023

Index : Yes
Neutral Citation : Yes
Speaking Order : Yes

To

- 1.The Assistant Sessions Judge, Additional Special Court for Trial of Cases relating to MPs and MLAs, Singaravelar Maligai, Chennai-1.
- 2.The Inspector of Police, Cyber Crime Cell, Central Crime Branch, No.132, Commissioner Office Building, EVK Sampath Road, Vepery, Periyamet, Chennai-7.
- 3.The Public Prosecutor, High Court, Madras.

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N.ANAND VENKATESH,J

RS

P.D.ORDER IN
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& Crl.M.P.No.8046 of 2021

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