



Crl.O.P.(MD).No.14838 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 17.11.2023

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THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

Crl.O.P(MD).No.14838 of 2020

and

Cr.M.P.(MD).Nos.7052 and 7053 of 2020

P.Ganesan

... Petitioner

Vs.

1. State rep. by

The Inspector of Police,
Dindigul Town North Police Station,
Dindigul.
(Crime No.745 of 2015)

2. Nazheer Batcha,

Sub-Inspector of Police,
Dindigul Town North Police Station,
Dindigul.

... Respondents

PRAYER: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for records in respect of C.C.No.417 of 2015 on the file of the Judicial Magistrate No.II, Dindigul and quash the same.

For Petitioner : Mr.D.Venkatesh

For Respondents : Mr.M.Muthumanikkam,
Government Advocate(Crl.Side) for R1



Crl.O.P.(MD).No.14838 of 2020

WEB COPY

ORDER

This Criminal Original Petition has been filed by the petitioner as against the proceedings initiated in C.C.No.417 of 2015, on the file of the Judicial Magistrate No.II, Dindigul and set aside the same.

2. The petitioner is the accused in Crime No.745 of 2015 and he is said to have committed the offence punishable under Section 188 of I.P.C., and Section 4 of the Tamil Nadu Prevention of open place (Prevention of Disfigurement) Act.

3. According to the prosecution, there is a poster was pasted on the barricade installed by the police department. In the poster, the following allegations are printed:

நான் திண்டுக்கல் நகர் வடக்குகாவல் நிலையில் சிறப்பு
சார்பு ஆய்வாளராகபணிபுரிந்துவருகிறேன்.நானும் என்னுடன்
பணிபுரியும் மு.நி.கா.650 Tr.விஜய் கண்ணன் என்பவரும்
சார்பு ஆய்வாளர் Tr.நாஜிர் பாட்சா அவர்களுடன்
30.06.2016ம் தேதி 04.30 மணிக்குகுற்றம் எதுவும்
நடக்காமல் இருக்கதிண்டுக்கல்
பஸ் ஸ்டாண்டு அருகிலுள்ளAMC ரோட்டில் இருக்கும் MGR
சிலை அருகேயுள்ளபோலிஸ் பூத் எதிரே இருக்கும்
போலிஸ் தருப்பு வேலி (பேரிகாடு)-ல்



Crl.O.P.(MD).No.14838 of 2020

WEB COPY

எவ்வித அரசு அனுமதி இல்லாமல் ப. கணேசன்,
S/o. பழனியப்பன், 25 திருச்சிசாலை, யாதவடேஞ்ஞா
ஜாக்காபட்டி, திண்டுக்கல் நாம் தமிழர்
கட்சிமாவட்ட ஒருங்கிணைப்பாளர் என்பவர்
வீழ்ந்துவிடாதவீரம், மண்டியிடாதமானம் கண்டிக்கிறோம்.
ஆலச்சிபட்டியில் திருட்டு போனதேசியத்தலைவர்
மேதகு வே. பிரபாகரன் அவர்களின் பெயர்
பதாகையை மீட்டுத் தரக்கோரி புகார் அளிக்கசென்றநாம்
தமிழர் கட்சி நிர்வாகிகளை தகாதவார்த்தைகளால்
திட்டி அவமானப்படுத்தியதாக இருந்த கவரொட்டியை போக்கு
வரத்தை சரிசெய்வதற்காக வைக்கப்பட்டிருந்த காவல்துறை
குப்பு வேலியில் ஒட்டியதை புகைப்படம் எடுத்தும்
நிலையம் வந்து நி. கு. எண். 745/15, U/s. 188 IPC and 4 of TN
prevention of open place Disfigurement Act-
ன்படி வழக்கு பதிவு செய்ய உதவியாக இருந்தோம். தாங்கள்
என்னை விசாரிக்க நடந்த விபரம் சொன்னேன்.

4. The investigating agency, after the registration of the case filed a final report and the same was taken on file in C.C.No.417 of 2020, on the file of the Judicial Magistrate, Dindigul. To quash the same, the petitioner filed this petition.

5. The learned counsel for the petitioner submitted that the registration of the case for the offence under Section 188 of IPC., is not maintainable as per the



Crl.O.P.(MD).No.14838 of 2020

judgment of this Court reported in **2018 LW(cri) 606** and **Crl.O.P.(MD).No.7977 of 2019**. So far as the offence under Sections 4 of the Tamil Nadu Prevention of open place (Prevention of Disfigurement) Act is concerned, the learned counsel has placed the unreported judgment of this Court in **Crl.O.P.No.12165 of 2021**. He would further submit that the investigating agency has collected lot of materials. None of the material disclosed that the petitioner pasted the poster on the barricade installed by the police department and it is the basic requirement to constitute the offence under Section 4 of the Tamil Nadu Prevention of open place (Prevention of Disfigurement) Act. In the absence of the said basic facts, the proceeding initiated against the petitioner is liable to be quashed.

6. The learned Government Advocate (Crl.Side), on instructions, submitted that the prosecution collected materials to show that the poster was affixed with the name of the respondent as a District coordinator, which itself showed that they pasted the poster. Hence, he seeks for dismissal.

7. This Court considered the rival submissions made by the learned counsel appearing on either side and perused the materials available on record.



Crl.O.P.(MD).No.14838 of 2020

8. This Court perused the records and also the materials collected by the investigating agency and the specific allegation in the FIR.

9. To constitute the offence under Section 4 of the Tamil Nadu Prevention of open place (Prevention of Disfigurement) Act, it is the duty of the investigating agency to collect the material to show that the petitioner only pasted the offensive poster in the open place. But, in this case, this Court finds no material from the record to show that the petitioner pasted the offensive material in the open place. In similar circumstance, this Court quashed the proceedings in *Crl.O.P.(MD).Nos.15089 of 2019 and 12165 of 2021*. Therefore, the offence under Section 4 of the Tamil Nadu Prevention of open place (Prevention of Disfigurement) Act is not made out.

10. The prosecution under Section 188 of IPC is not maintainable on the basis of the registration of the FIR, by the investigating agency. This Court in the cases reported in **2018 LW(cri) 606** and ***Crl.O.P.(MD).No.7977 of 2019***, has quashed the proceedings on that ground alone. Therefore, this Court has no reason to differ with the said precedent.



Crl.O.P.(MD).No.14838 of 2020

WEB COPY

11. In view of the above, this Court finds that the proceeding in C.C.No. 417 of 2015 on the file of the Judicial Magistrate No.II, Dindigul initiated as against the petitioner is liable to be quashed and accordingly, this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

17.11.2023

NCC : Yes/No
Index : Yes/No
Internet: Yes/No
sbm

To

1. The Judicial Magistrate No.II,
Dindigul.
2. The Inspector of Police,
Dindigul Town North Police Station,
Dindigul.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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Crl.O.P.(MD).No.14838 of 2020

K.K.RAMAKRISHNAN, J.

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