

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **28.11.2016**

CORAM

THE HONOURABLE MR.JUSTICE P.KALAIYARASAN

**Crl.O.P No.12783 of 2010
and M.P.No.1 of 2010**

Sri Nithyananda Swamy .. Petitioner
Vs.

K.Selvamani .. Respondent

Prayer : - Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the case registered in C.C.No.55 of 2010 on the file of the District Munsif-cum-Judicial Magistrate, Sriperumpudur and quash the same.

For Petitioner : Mr.I.Subramanian
Senior counsel for
M/s. G.Bala and Daisy

For Respondent : No Appearance

ORDER

This Criminal Original Petition has been filed by the accused praying to call for the records in C.C.No.55 of 2010 on the file of the District Munsif-cum-Judicial Magistrate, Sriperumbudur and quash the same.

2. It is averred in the petition that the petitioner has been conducting world wide movement for meditation and healing and yoga. He along with his followers has formed and is running Trusts and other charitable institutions. The Trust was established under the Indian Trust Act and duly registered before the Sub-Registrar, Kengere, Bangalore in the name of "Dhyanapeeta Charitable Trust" and the same was formed to provide service in various fields to the public.

3. To his shock and surprise on 02.03.2010, a private TV News channel telecasted a false video footage in which it was shown that the petitioner was allegedly found in close company with a woman by name Ms.Ranjitha, who is one of the devotees and film actress. The petitioner did not commit any offence as punishable under law.

4. On 11.03.2010, the respondent K.Selvamani claims himself to be a practising Advocate submitted a private complaint before the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur against the petitioner alleging that the petitioner has committed offence under Section 295(A) IPC. The complaint has been preferred without application of mind to the statutes, facts and materials.

5. The learned Judicial Magistrate erred in taking cognizance of the case especially in the light of the specific prohibition in Section 196(1) of Criminal Procedure Code. As per the above statutory provision of law, prior sanction of the State Government is mandatory requirement to take cognizance of an offence under Section 295(A) IPC. The alleged offence is also not made out. For the very same allegations mentioned in the impugned complaint, three criminal cases have been registered in Tamil Nadu and one case in Pondicherry. As per the orders of the Director General of Police, Tamil Nadu, two cases have already been transferred to the State of Karnataka and investigation is nearing completion in those cases including an alleged offence under Section 295(A) IPC. Therefore, the proceedings in C.C.No.55 of 2010 on the file of the District Munsif-cum-Judicial Magistrate, Sriperumbudur are to be quashed.

6. In spite of the opportunities given to the respondent, there was no representation.

7. The learned Senior counsel appearing for the petitioner contends that there is a bar under Section 196 (1) Cr.P.C for the Judicial Magistrate to take cognizance of the offence under Section 295(A) IPC in a case where there is no previous sanction of the Central Government or of the State Government.

8. The respondent / complainant filed the complaint before the District Munsif-cum-Judicial Magistrate, Sriperumbudur alleging that the petitioner / accused committed offence under Section 295(A) IPC and the learned Judicial Magistrate, after recording sworn statement of the complainant took cognizance of the offence for the offence under Section 295(A) IPC and issued process to the accused.

9. Section 196(1) of the Code of Criminal Procedure, 1974 says that no Court shall take cognizance of an offence punishable under Chapter VI or under Section 153 (A), Section 295(A) or Sub-section (1) of Section 505 of IPC, except with the previous sanction of the Central Government or of the State Government.

10. The learned Senior counsel also cited our Hon'ble Supreme Court Judgment in **Manoj Rai and others v. State of M.P**, reported in **(1999) 1 SCC 728**, wherein it has been held as follows :

"2. Since the learned counsel for the State fairly states on instructions that no sanction was given in accordance with Section 196(1) of the Criminal Procedure Code to prosecute the appellants for the offence under Section 295-A of the Indian Penal Code, we allow this appeal and quash the impugned proceedings..."

11. In this case, the case before the Judicial Magistrate is a private complaint filed by the respondent. No previous sanction of the State Government was obtained to file the case as against the petitioner for the offence under Section 295(A) IPC, 1860. In the absence of sanction, the learned Judicial Magistrate ought not to have taken cognizance of the offence under Section 295(A) IPC against the petitioner. Hence, the proceedings for the offence under Section 295(A) as against the petitioner are not sustainable and liable to be quashed.

In fine, this Criminal Original Petition is allowed and the proceedings as against the petitioner in C.C.No.55 of 2010 on the file of the learned District Munsif-cum-Judicial Magistrate, Sriperumbudur are quashed. Consequently, connected miscellaneous petition is closed.

28.11.2016

Index : Yes / No
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To

1. The District Munsif-cum-Judicial Magistrate
Sriperumpudur.
2. The Public Prosecutor,
High Court of Madras, Chennai.

P.KALAIYARASAN, J

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