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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.12.2016

CORAM

THE HON'BLE MR.JUSTICE G.CHOCKALINGAM

Crl.O.P.(MD) No.22217 of 2016

and

Crl.M.P(MD)No.11502 and 11503 of 2016

1.M.Suresh

2.M.Natarajan

3.M.Ramakrishnan

4.S.Selvam

5.M.Murugan

: Petitioners/A1 to A5

-vs-

1.State represented by

Inspector of Police,

V.K.Puram Police Station,

Tirunelveli District.

: 1st Respondent / Complainant

2.S.Chokkalingam,

Village Administrative Officer,

Kodarankulam Village,

Ambasamuthram Taluk,

Tirunelveli District.

: 2nd Respondent/Defacto Complainant

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the Charge sheet in C.C.No.241 of 2015 on the file of the learned Judicial Magistrate, Ambasamuthram, Tirunelveli District, in Crime No.268 of 2012, dated 15.08.2012 on the file of the respondent No.1 police for alleged offences under Sections 143, 188 of IPC and Section 2 of Prevision Insult of National Honour Act, 1971.

For Petitioner

: Mr.T.Lajapathi Roy

For Respondent

: Mr.K.Anbarasan

Govt. Advocate (Crl.Side)

O R D E R

This petition has been filed, seeking to call for the records pertaining to the Charge sheet in C.C.No.241 of 2015 on the file of the learned Judicial Magistrate, Ambasamuthram, Tirunelveli District, in Crime No.268 of 2012, dated 15.08.2012 on the file of the respondent No.1 police and quash the same.



2.The case of the prosecution is that on 15.08.2012, the accused hoisted black flag on their houses and electric poles without permission.

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3.The learned counsel appearing for the petitioners has submitted that the petitioners belong to Scheduled Caste community and on 10.07.2012, one Kumar, who was working as Government Advocate and one Suresh Kumar, Inspector of Police and other police officials, attached to Ambasamuthram Police Station removed the dress of one Mokkaandi @ Petchimuthu and abused him by stating his caste name and also attacked him and taken him to the Police Station and when, it was known to the village people, they gathered in the street and at the time, the said Kumar, had reached the occurrence place and abused the petitioners, by stating the caste name and also threatened the public with dire consequences and in this regard, one Arumugam lodged a complaint before the District Collector, Tirunelveli, on 17.09.2012 and 13.08.2012 to take appropriate action against the said officials; since, there was no response, the petitioners were hosting black flags on their houses, on 15.08.2015 to show their protest without causing any hindrance to the public.

4.It is further submitted that the petitioners have not insulted the nation flag at any manner and specific acts, which may lead to a conclusion of disrespect to the national flag are burning, trampling, defiling or mutilating in public and that every citizen of India have right to freedom of speech and expression under Article 19(1) of the Constitution of India and placed reliance upon the decision reported in 2001 CRI.L.J.1863 [Publisher, Sportstar Magazine, Chennai vs. Girish Sharma] and 2004 CRI.L.J. 1002 [Ganesh Lal Bathri vs., State of M.P.], in support of his contention.

5.Heard the learned Government Advocate (Criminal side) appearing for the State and he contended that based on the complaint lodged by the Village Administrative Officer, the complaint was registered against the accused and the relief sought for by the petitioners in this petition cannot be granted.

6.In the judgment reported in 2001 CRI, L.J. 1863 [The Publisher, Sportstar Magazine, Chennai vs. Girish Sharma], it has been held as follows:-

„19.The photograph and the opinion given in the article by the writer in my view,, is to impress upon the players as well as the Organisers of the Tournament that at least in the future, the Flags of the respective countries must be placed



in a correct way and proper placement of the National Flag only would pave the way for the proper play. Therefore, this is only a comment by the press which indicates the importance of the honour to be given to the National Flag.

21. Furthermore, freedom of the press; expressing opinion on a particular event cannot be curtailed, since the said freedom is the heart of social and political intercourse. Though the expression "freedom of the press" has not been used in Article 19, it is comprehended within Article 19(1)(a). This expression means a freedom from interference from authority which would have the effect of interference with the content and circulation of newspapers.

31. In the light of the above principles, the publication of the photograph and the opinion given by the writer of the article is well within the rights of the press as it conveys only its freedom of expression. In my opinion, this Sportstar Magazine has done its Dharmic Duty in expressing its correct opinion.

7. In the judgment reported in 2004 CRI. L.J. 1002 [Ganesh Lal Bathri Vs. State of M.P.], it has been held as follows:-

„6. From a perusal of the relevant provisions of the Act so also the Code and on a careful scrutiny of materials on record, it is clear that there is a dearth of materials to show an intention or *mens rea* to disrespect the national flag and thereby to undermine the sovereignty of nation. The applicant was working as the Principal of a Govt. High School and being the incharge could hoist the flag but since the complainant was authorized to do so, the applicant could not have played any mischief, unless there is a positive material to the contrary, in tying the flag in reverse order through a lower staff to show down the complainant. Further the moment it was noticed that the saffron colour was down, the flag was immediately tied in proper order as per the Code. From the FIR itself, it is obvious that the complainant, being a Sarpanch, was inimically disposed towards the applicant over hoisting the flag. Moreover, the Rojnam-cha Sanha No. 600 registered at Police Station, Ugali, dated 26-1-1999 only speaks about an irregularity in hoisting



the flag by putting it in reverse order. Further, the flag was hoisted not within the premises of Government High School as per spot map but within the precincts where other schools are also housed. In addition to that, the inclusive clause of Section 2 or otherwise brings into contempt' cannot be stretched that far as to include acts in question which are absolutely devoid of elements of mens rea or disrespect and thus fall outside the definition of contempt as given in Black's Dictionary. Similarly the applicant cannot be sent up for trial on account of vicarious liability on the basis of an omnibus statement made by the complainant. The applicant might be under a bona fide belief that a lower staff who had been tying the flag for years would again tie it in proper order and thus the applicant cannot be made to suffer a trial upon the charges which are not disclosed from the materials on record.

7. Under the circumstances, from the materials on record, no offences under Sections 2 and 3 of the Act are made out. Accordingly, the order passed by learned Judicial Magistrate First Class, Seoni dated 8-2-2002 is hereby set aside and the charges framed thereunder are hereby quashed. Thus, the criminal revision succeeds.

8. Section 2 of the Prevention of Insults to National Honour Act, 1971, reads as follows:-

'2. 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.'

9. In the instant case on hand, it has been mentioned in the charge sheet filed in C.C.No.241 of 2015 that the accused are hoisting black flag in their houses only and they have not insulted the nation flag at any manner. Hence, this court is of the considered view that no ingredients are available to attract the offences as alleged in the charge sheet against the petitioners and hence, the charges laid by the prosecution against the petitioners are erroneous.



10. In view of the above facts, this petition is allowed and the charge sheet filed in C.C.No.241 of 2015 on the file of the learned Judicial Magistrate, Ambasamuthram, Tirunelveli, in connection with the case in Crime No.268 of 2012 is quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(Records)

/True Copy/

Sub Assistant Registrar

To:

- 1.The Inspector of Police,
V.K.Puram Police Station,
Tirunelveli District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Judicial Magistrate,
Ambasamuthram,
Tirunelveli District.

Copy to:-

The Section Officer,
Criminal Section Records,
Madurai Bench of Madras High Court,
Madurai.

Cr1.O.P. (MD) No.22217 of 2016
22.12.2016

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