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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.05.2017

CORAM

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.(MD) No.16585 of 2015

and

Crl.M.P.(MD)No.1199 of 2016

Sakthi @ Meppal Sakthi

... Petitioner/Accused No.1

-vs-

1.State represented by,
The Inspector of Police,
Kalaiyarkovil Police Station,
Sivagangai District.
(Crime No.135 of 2014)

2.The Special Tahsildar,
Flying Squad,
Sivagangai Legislative Constituency,
Sivagangai. ... Respondents/Complainants

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records in connection with S.T.C.No.747 of 2015 on the file of the Learned Judicial Magistrate No.I, Sivagangai and quash the same.

For Petitioner : Mr.V.Sasi Kumar

For Respondents : Mr.K.Anbarasan,
Government Advocate (Crl. Side)

O R D E R

On the complaint lodged by the Special Tahsildar, the respondent police registered a case in Crime No.135 of 2014 on 16.04.2014 and after completing the investigation, filed charge sheet in S.T.C.No.747 of 2015 before the Judicial Magistrate No.I, Sivaganga for offence under Section 4(A)(1) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959 against the accused, challenging which, A1 is before this Court.

2. It is the case of the prosecution that during the General Election to the Parliament that was held in the year 2014, the Special Tahsildar found that the accused had painted in the compound wall of a house, their party symbol and name of the



candidate seeking votes for him without the permission of the Election Authorities and the owner of the house. Hence this FIR and charge sheet.

3. Mr.V.Sasi Kumar, learned counsel appearing for the petitioner, submitted that there is absolutely no material against the petitioner for prosecuting him under the said Act. He took this Court through the provisions of Section 4(A)(1) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959, and submitted that the owner of the property had not given any complaint against the petitioner and he relied upon a Judgment of the learned Single Judge of this Court in **Pandirajan v. State and another**, dated 13.04.2010.

4. Per contra, the learned Government Advocate (Crl. Side) refuted the contentions.

5. This Court gave its anxious consideration to the rival submissions.

6. On a reading of the FIR and the charge sheet, it is clearly stated by the Special Tahsildar that without obtaining any permission from the Returning Officer and from the landlord of the house, the petitioner had painted their party symbols in the compound wall. In the case relied upon by the learned counsel for the petitioner, this Court has held in Paragraph Nos.7 to 9 as follows:

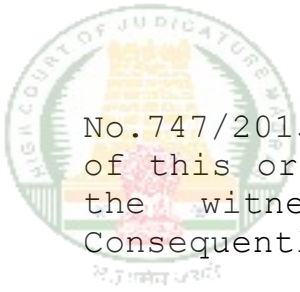
"7.Admittedly, there is no allegation against the petitioner that he involved in the alleged activity warranting the penalty under Section 4(1) of the Act.

8.It is one thing to say that the petitioner was a candidate in the Election and another thing to say that the petitioner had committed an offence under Section 4 (1) of the Act.

9.Therefore, in the absence of any averment implicating the petitioner, the proceedings against the petitioner cannot be sustained."

Only in those circumstances, the prosecution was quashed in that case. However, in this case, the facts are little different, inasmuch as, there are sufficient averments implicating the petitioner in the offence and therefore, the prosecution cannot be quashed at the threshold.

7. In the result, this petition is dismissed with liberty to the petitioner to raise all the points before the trial Court. The trial Court is directed to complete the trial in STC



No.747/2015 within six months from the date of receipt of a copy of this order, provided, the accused cooperates by cross examining the witnesses on the day, they are examined in chief. Consequently, the connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar

MRN/CMR/RR

To

1.The Judicial Magistrate No.I,
Sivagangai

2.The Inspector of Police,
Kalaiyarkovil Police Station,
Sivagangai District.

3.The Special Tahsildar,
Flying Squad,
Sivagangai Legislative Constituency,
Sivagangai.

4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CrI.O.P. (MD) No.16585 of 2015
and
CrI.M.P. (MD) No.1199 of 2016
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