

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.12.2017\*

Pronounced on : 13.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

Crl.O.P.Nos.6763, 8715 & 8716 of 2017  
and

Crl.M.P.Nos.4950, 4951 & 6214 to 6217 of 2017

1.K.J.Suriyanarayanan ... Petitioner in Crl.O.P.6763 of 2017  
2.K.A.R.Menaasi Suntar ... Petitioner in Crl.O.P.8715 of 2017  
3.P.Prabhakaran ... Petitioner in Crl.O.P.8716 of 2017

Vs.

1.State rep. by  
The Inspector of Police (L & O),  
R1, Mambalam Police Station,  
T. Nagar,  
Chennai-600 017. ... Respondent in all Crl.O.Ps

2.B.Sundari,  
Honorary Secretary,  
St. John Ambulance,  
No.15, Kannadhasan Street,  
T. Nagar,  
Chennai. .... Respondent in Crl.O.P.6763/2017

R2-impleaded as per the order of this Court  
dated 30.11.2017 made in Crl.M.P.14900/2017  
in Crl.O.P.No.6763 of 2017

Common Prayer: Criminal Original Petitions filed under Section  
482 Cr.P.C., praying to call for the records pertaining to the  
proceedings in C.C.No.6099 of 2016 on the file of the learned  
XVII Metropolitan Magistrate, Saidapet, Chennai and to quash the  
same.

For Petitioner : Mr.Shanmugavelayutham, Sr. counsel  
for Mr.S.V.Pravin Rathinam  
in Crl.O.P.No.6763 of 2017

For Petitioner in : No Appearance  
OP.8715, 8716/17

For Respondent-1 : Mr.C.Iyyapparaj, APP  
in all Crl.O.Ps

For Respondent-2 : No Appearance

C O M M O N   O R D E R

Challenging the proceedings in C.C.No.6099 of 2016 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai, the present petitions are filed.

2.The case of the prosecution is that on 10.12.2015, the Chairman of the St. John's Ambulance had received a phone call from the first accused threatening for the action taken by all the three petitioners herein. In view of the phone threat, the case came to be registered in FIR No.3999 of 2015 and after investigation, charge sheet has been laid against the said Mahalingam along with the petitioners herein, for offences under Sections 294(b), 506(i) r/w.109 IPC.

3.Heard Mr.Shanmugavelayutham, learned Senior counsel for the petitioner in Crl.O.P.No.**6763\*** of 2017 and Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing on behalf the respondent police.

4.The learned Senior counsel for the petitioner in Crl.O.P.No.**6763\*** of 2017 submitted that the said offences have not been made out as against these petitioners herein and hence sought for quashing of the proceedings in C.C.No.6099 of 2016 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai.

5.The learned Additional Public Prosecutor on the other hand submitted that the offences are made out in view of the fact that the phone call was at the instigation of the petitioners herein.

6.I have given careful consideration to the submissions made by the respective counsels.

7.The petitioners herein have been arrayed as the second, third and fourth accused in the impugned charge sheet. It is not in dispute that the phone call received by the Chairman of St. John's Ambulance through one Suba Ilavarasan, was made by the first accused, who is not the petitioner herein. None of the witnesses, who have given the statements under Section 161 (3) Cr.P.C., have stated that these petitioners had caused threat to the Chairman of St. John's Ambulance.

8.In order to attract the offences under Sections 294(b) and 506(i) IPC are concerned, the reciting of obscene words or causing threat should be made by some individual and the offence gets attracted only against that individual. In the present case, it is alleged that the obscene words and threat was caused only by the first accused and that the accused 2 to

4/petitioners herein did not have any role to play in it. As such, these two offences may not be attracted, as against these petitioners herein.

9.Insofar as the offence of abetment is concerned, neither the complainant nor had any of the witnesses spoken that the petitioners herein had instigated or engaged or intentionally aided the first accused for having caused the threat or using obscene language over the phone. The witnesses only speak about the first accused of having spoken over the phone stating that none should interfere into the affairs of the petitioners herein. This statement cannot be taken as an instigation or a conspiracy of these petitioners to make threatening call or can it be deemed to be intentionally aiding the first accused to make the phone call. As such, it can only be concluded that the offence of abetment punishable under Section 109 IPC also has not been made out, insofar as the petitioners herein are concerned.

10.In the result, the Criminal Original Petitions deserve to be allowed. Accordingly, the proceedings in C.C.No.6099 of 2016 on the file of the learned XVII Metropolitan Magistrate, Saidapet, Chennai stands quashed, insofar as it relates to the petitioners herein are concerned. It is made clear that the trial Court shall proceed with the proceedings as against the first accused. Consequently, the Criminal Original Petitions are allowed. Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS V)

dt. 21.3.2018

reservation date and case number  
in paragraph Nos.3 and 4 are corrected  
as per order of the court dated 28.3.2018

Sd/-

Assistant Registrar (CS-V)

dt.18.4.2018

//True copy//

Sub Assistant Registrar

DP

To

1.The XVII Metropolitan Magistrate,  
Saidapet, Chennai.

2. The Inspector of Police (L & O),  
R1, Mambalam Police Station,  
T. Nagar,  
Chennai-600 017.

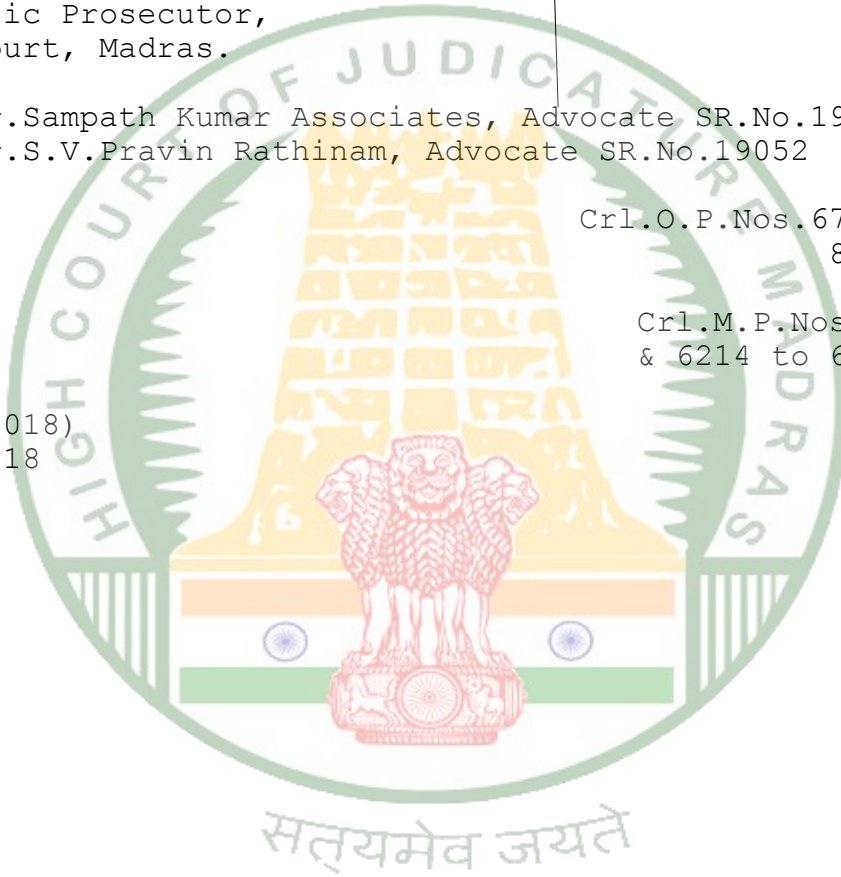
3.The Public Prosecutor,  
High Court, Madras.

+4cc to Mr.Sampath Kumar Associates, Advocate SR.No.19610 & 19611  
+2cc to Mr.S.V.Pravin Rathinam, Advocate SR.No.19052

To be substituted to the  
order already despatched  
on 28.3.2018

Crl.O.P.Nos.6763, 8715 &  
8716 of 2017  
and  
Crl.M.P.Nos.4950, 4951  
& 6214 to 6217 of 2017

KAN(CO)  
GN(23/03/2018)  
EU 18.4.2018



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