



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2018

CORAM:

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD).No.13337 of 2014

and

M.P.(MD) Nos.1 and 2 of 2014

and

M.P.(MD) No.1 of 2015

S.Rethinavelu

..Petitioner./2nd Accused

Vs.

1.State represented through
The Inspector of Police,
Sattur Taluk Police Station,
Virudhunagar District,
in Crime No.69/2014

2.A.pauldurai
Tahsildar, Election Flying Squad No.1,
Sattur, Virudhunagar District.

..Respondents

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to STC No.1570/2014 pending on the file of the Judicial Magistrate No.II, Sattur and to quash the same.

For Petitioner : Mr.Babu Rajendran

For Respondents : Mr.v.Neelakandan, APP for R1

O R D E R

This quash petition is filed to quash the criminal proceedings in STC No.1570/2014 pending on the file of the Judicial Magistrate No.II, Sattur, thereby having been taken cognizance for the offences under Sections 171(I) of I.P.C. read with Section 4 of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959 as against the petitioner and another.

2.The case of the prosecution is that on 10.04.2014 at about 23.30 hours, when the second respondent/complainant along with the police personnel, while on their patrol, they found that the petitioner and another accused violating the election rule/model code of conduct, erecting festoon of party flags of DMK, Viduthalai



Sithrhaikal and Puthiya Thamilagam and also placing flex board of Kalaigiar Karunanithi were canvassing for DMK and thereby violated election rules and committed the offence under Sections 171(I) of I.P.C. read with Section 4 of Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959 and a case has been registered in crime No.69 of 2014 on the file of the first respondent, in which, the petitioner arraigned as A2. The said criminal proceedings is under challenge in this criminal original petition.

3.The learned counsel appearing for the petitioner would submit that the petitioner herein has contested in the parliamentary election as the candidate of political party of DMK in Virudhunagar Constituency. Mr.K.K.S.S.R.Ramachandran, who was the former Minister is arraigned as A1. He would further submit that the petitioner has not committed any offences as alleged by the prosecution. Due to political enmity, a false case has been foisted. The petitioner has not violated any rules and model code of conduct relating to election. He would further contend that the charges against the petitioner were not attracted, since there is absolutely no allegation of failure to keep the election account and there is no allegation against the petitioner that he has violated the election rules/model code of conduct. Therefore, no offence is made out as against the petitioner as alleged by the prosecution. Therefore, he prayed for quashment of entire criminal proceedings.

4.Per contra, the learned Additional Public Prosecutor would submit that there are specific allegations as against the petitioner to proceed with the trial. Further, he would submit that the petitioner is a habitual offender by committing this kind of crimes. Therefore, he vehemently opposed the quash petition and prayed for dismissal of the same.

5.Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents/State and perused the materials available on record.

6.On a perusal of the charge as against the petitioner is concerned, the first respondent levelled the charge under Section 171(I) of I.P.C. read with Section 4 of Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959. It is relevant to mention the definition of the offence under Section 171 (1) of I.P.C., which reads as follows:

"171(I). Failure to keep election accounts –
Whoever being required by any law for the time being in force or any rule having the force of law to keep accounts of expenses incurred at or in connection with an election fails to keep such accounts shall be punished with fine which may extend to five hundred rupees."

7.Perusal of the above definition, it is clear that it is not the case of prosecution that the petitioner fails to keep the



election account. Therefore, as alleged by the prosecution, the offence under Section 171(I) of I.P.C. is not attracted as against the petitioner.

8. Insofar as the offence under Section 4 of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959, it reads as follows:

"4.- Penalty for unauthorized disfigurement by advertisement:

Subject to the provisions of Section 4-A, whoever affixes to, or inscribes or exhibits on, any place open to public view any advertisement, without the written consent of the owner or occupier or person in management of the property in which such place is situated shall be punished with imprisonment of either description for a term which may extend to three months or with fine which may extend to two hundred rupees, or with both.

(2) the Court while convicting the offender under sub-section(1) may or order, also, direct the offender to pay by way of compensation to the owner or occupier or person in management of the building or premises, of such amount not exceeding five hundred rupees on the whole as may be reasonably incurred by him in erasing and colour washing the portions of the building or premises which have been disfigured by the act of the offender."

9. The reading of the above section would clearly show that, whoever indulges any such action will be liable for imprisonment for a term, which may extend to three years or with fine which may extend to two hundred rupees, or with both. Admittedly, there is allegation to attract this offence as against the petitioner that he involved in the alleged activity warranting the penalty for the said offence. Thus, it is construed that only because of the reason that the petitioner contested in the parliamentary election as DMK party candidate in Virudhunagar Constituency, the present case has been foisted as against the petitioner. Therefore, in the absence of any averment implicating the petitioner, the entire proceedings as against the petitioner cannot be sustained.

10. It is also seen from the charges that there is no mentioning of exact place of occurrence and whether the alleged place is a place open to public as defined under the Act has also not been mentioned in the charge sheet. Therefore, even as per the case of prosecution, no averments to attract the said charges as against the petitioner. Therefore, this Court is of the view that the entire criminal proceedings as against the petitioner is liable to be quashed.



11. In view of the above discussions, this criminal original petition is allowed and the criminal proceedings in STC No.1570/2014 pending on the file of the Judicial Magistrate No.II, Sattur is quashed as against the petitioner herein. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS-III)

Sub Assistant Registrar (CS-IV)

To

1. The Judicial Magistrate No.II,
Sattur.

2. The Chief Judicial Magistrate,
Srivilliputhur at Virthunagar.

3. The Inspector of Police,
Sattur Taluk Police Station,
Virudhunagar District,
in Crime No.69/2014

4. The Tahsildar, Election Flying Squad No.1,
Sattur, Virudhunagar District.

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

• 1 CC TO Mr. Babu Rajendran , ADVOCATE IN SR No. 87272.

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