



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.09.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P.(MD).No.16600 of 2014
and
M.P.(MD) Nos.1 and 2 of 2014

S.Rethinavelu

..Petitioner/Accused

Vs.

1.State represented through
The Inspector of Police,
Sivakasi East Police Station,
Virudhunagar District
in Crime No.156/2014

2.S.Rajendran,
Village Administrative Officer,
Arupankulam Village,
Sivakasi Taluk,
Virudhunagar District.

..Respondents/Complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to STC No.2329/2014 pending on the file of the Judicial Magistrate, Sivakasi and to quash the same.

For Petitioner : Mr.Babu Rajendran

For Respondents : Mr.V.Neelakandan, APP

O R D E R

This quash petition is filed to quash the criminal proceedings in STC No.2329/2014 pending on the file of the Judicial Magistrate, Sivakasi, thereby having been taken cognizance for the offences under Section 188 of I.P.C. as against the petitioner.

2.The case of the prosecution is that on 30.03.2014 at about 12.00 Noon, the 2nd respondent being a Village Administrative Officer found that the DMK party candidate and party big-wigs canvassing votes with their party flag along with 12 vehicles near Anupankulam by violating the election rules and committed the offence under Sections 171(A) of I.P.C. read with Section 4(A) of Tamil Nadu Open



Places (Prevention of Disfigurement) Act, 1959 and a case has been registered in crime No.156 of 2014 on the file of the first respondent, in which, the petitioner arraigned as A2. Subsequently, the first respondent altered the offence into Section 167 of Representation of the People Act, 1951 and laid charge sheet on 30.06.2014 before the learned Judicial Magistrate. Thereafter, on 02.07.2014, the first respondent further altered the offence under Section 188 of I.P.C and filed the alteration report also and the case was taken cognizance by the learned Judicial Magistrate, Sivakasi in S.T.C.No.2329 of 2014. 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. 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 charge against the petitioner was not attracted, since there is no allegation against the petitioner that he has violated the election rules/model code of conduct. Further, he would contend that there is absolutely no witnesses have spoken about the occurrence and to connect the petitioners, there are no materials to proceed with the trial. When there is no material to proceed with the trial, the petitioners unnecessarily would not have put them an ordeal trial. Therefore, he prayed for quashment of the 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 188 of I.P.C. as against the petitioner. It is seen from the charge that on 30.03.2014 at about 12.00 Noon, the 2nd respondent being a Village Administrative Officer found that the the DMK party candidate and party big-wigs canvassing votes with their party flag along with 12 vehicles near Anupankulam by violating the election rules. Except the official witnesses, no one has spoken about the occurrence and no one was examined to substantiate the charge against the petitioner. It is also seen from the charge itself that the charges are very simple in nature and trivial. Section 188



reads as follows:

"188. Disobedience to order duly promulgated by public servant - Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

7. Considering the above, this Court finds that for the simple charge, the petitioners cannot be put into an ordeal trial. Therefore, this Court is inclined to quash the criminal proceedings as against the petitioners.

8. In view of the above discussions, this criminal original petition is allowed and the criminal proceedings in STC No.2329/2014 pending on the file of the Judicial Magistrate No.II, Sivakasi, is quashed as against the petitioner herein. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The Judicial Magistrate NO.II, Sivakasi.

2. The Chief Judicial Magistrate,
Srivilliputhur at Virudhunagar.

3. The Inspector of Police,
Sivakasi East Police Station,
Virudhunagar District

4. The Village Administrative Officer,
Arupankulam Village,
Sivakasi Taluk,
Virudhunagar District.



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

- 1 CC TO Mr. Babu Rajendran, ADVOCATE IN SR No. 87270.

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