



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.10.2018
CORAM:
THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CrI.O.P. (MD) .No.20969 of 2014
and
M.P. (MD) Nos.1 and 2 of 2014

1.Frankline
2.Sujatha
3.Baby
4.Arul
5.Selvam
6.Selvan
7.Chelladurai
8.Subin
9.Ramdoss
10.Mathias
11.Noble
12.Raju
13.Daisy Bai
14.Ebenezer
15.Hitlor Singh
16.Darling Vijila Rani
17.Lawrence
18.Rajan
19.Maria John

..Petitioners

Vs.

1.The State represented by its
The Inspector of Police,
Keeriparai Police Station,
Kanniyakumari District.

2.Maruthunayagam

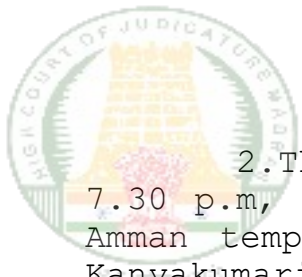
..Respondents

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.93 of 2012 on the file of the District Munsif cum Judicial Magistrate, Boothapandi and quash the same.

For Petitioners : Mr.T.A.Ebenezer
For Respondents : Mr.A.P.G.Ohm Chairma Prabhu
G.A.(CrI. Side) for R1

ORDER

This petition is filed to quash the C.C.No.93 of 2012 on the file of the District Munsif cum Judicial Magistrate, Boothapandi as against the petitioners, having been taken cognizance for the offence under Sections 152, 153(A) and 188 of I.P.C.



2.The case of the prosecution is that on 21.09.2012 at about 7.30 p.m, the petitioners were obstructing the worshippers of Devi Amman temple, comprised in S.No.37/2 situated at Dhadikarankonam, Kanyakumari Distict and also instigated to suppress a riot, affray and threatened them in front of Forest Office of Dhadikarankonam and promoting enmity between different groups on grounds of religion, race, place of birth, residence, language and thereby committed offences under Section 152, 153(A) and 188 of I.P.C. Hence the complaint.

3.The learned counsel appearing for the petitioner would submit that the petitioners are arraigned as A1 to A19 and even as per the charge sheet, no offence under Sections 152, 153(A) and 188 of I.P.C. are attracted as against the petitioners. To make out a case under Section 152 of I.P.C., the persons must have assaulted or threatened or obstructed by the public servants while discharging their duties or used or attempted to use criminal to such public servant while discharging his duties. Whereas, it is seen from the charge, no averments and no allegations and no piece of evidence to attract the offence under Section 152 of I.P.C. as against the petitioners.

4.Further, he would submit that to attract the offence under Section 188 of I.P.C., there must be promulgation order by the competent public servant and the order should have directed the accused to obstruct from certain act and such disobedience must have caused some annoyance. It is seen from the charge and the allegations, there is absolutely no allegation that there was a promulgation order and it was violated by the petitioner. In such circumstances, no offences are made out as against the petitioners and hence, he prayed for quashment of the criminal proceedings as against the petitioners.

5.Per contra, the learned Government Advocate (criminal side) would submit that all the petitioners have obstructed the government officials while they are doing their official duty. Further, they promote enmity between different groups on the ground of religion and thereby committed the offence under Section 153 (A) of I.P.C. Further, he would submit that there was an obstruction order to do any action and knowing the same, the petitioners violated the said order and committed the offence under Section 188 of I.P.C. and hence, he prayed for dismissal of the petition.

6.Heard the learned counsel appearing for the petitioners and the learned Government Advocate (criminal side) appearing for the State and perused the materials of records.

7.It is seen from the charge that on 21.09.2012 at about 7.30 p.m, the petitioners obstructed the worshippers with the intention to provoke to cause riot. For the convenience, the offence under Section 153(A) (1)(a) is extracted herein:



"153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony -

(1) Whoever- (a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities."

Even according to the prosecution, there is no words either spoken or written or by signs or by visible representations or otherwise promotes or attempts to promote on the grounds of religion, race, place of birth, residence by the petitioners. When it being so, the offence under Section 153-A is not at all attracted as against the petitioners.

8.Insofar as the offence under Section 152 of I.P.C. is concerned, there are no assaults, threatens to assault or obstructs or attempts to obstruct any public servants in discharging of his duties as a public servant. Therefore, the offence under Section 152 of I.P.C. is also not attracted as against the petitioners.

9.Insofar as the offence under Section 188 of I.P.C. is concerned, for convenience Section 188 of I.P.C. extracted herein:

"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 trends 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.

Considering the ingredients of Section 188 of I.P.C. along with the perusal of the charge as against the petitioners are concerned, 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. Therefore, this Court finds that for the simple charges, the petitioners cannot be put into an ordeal trial. Therefore, this Court is inclined to quash the criminal proceedings as against the petitioners.

10. In view of the above discussions, this criminal original petition is allowed and the criminal proceedings in C.C.No.93 of 2012 on the file of the District Munsif cum Judicial Magistrate, Boothapandi, is quashed as against the petitioners herein. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AD-I)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The Inspector of Police,
Keeriparai Police Station,
Kanniyakumari District.
2. The District Munsif cum Judicial Magistrate,
Boothapandi.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.T.A.Ebenezer, Advocate, SR.No.88214

Crl.O.P.(MD).No.20969 of 2014
and

M.P.(MD) Nos.1 and 2 of 2014
01.10.2018

Arul

ES/SKN/RSK/SAR 3/15.11.2018/4P/5C