



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 10.04.2018
PRONOUNCED ON : 05.06.2018
CORAM:

THE HONOURABLE MR. JUSTICE G.R. SWAMINATHAN

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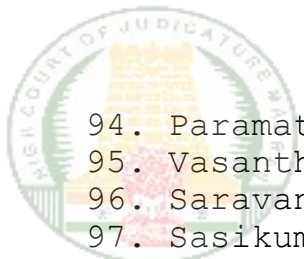
CRL.O.P (MD) Nos.9577 and 9578 of 2013
and
M.P. (MD) .Nos.1 and 1 of 2013

In Crl.O.P (MD) No.9577 of 2013:

- 1.K.Ramakrishnan
- 2.Ravana
- 3.Ramasamy
- 4.Thiyagarajan
- 5.Jagadesh
- 6.Gunasekar
- 7.Balasubramanian
- 8.Guru. Saravanan
- 9.Subburayan
- 10.Periyasamy
- 11.Perumal
- 12.Murugan
- 13.Jagan
- 14.Sivamurugan
- 15.Suresh
- 16.Velusamy
- 17.Venkatesh
- 18.KRishnamurthy
- 19.Dhanapal
- 20.Jagan
- 21.Krishnan
- 22.Sugumar
- 23.Manoharan
- 24.Velu
- 25.Selvaraj
- 26.Iyyanar
- 27.Jai
- 28.Senthilmurugan
- 29.Sivanandham
- 30.Sivasankar
- 31.Prakash
- 32.Viduthalaisekar
- 33.Kumaresan
- 34.Muruganandham
- 35.Balamurugan
- 36.Vijaykumar
- 37.Navaneetham
- 38.Karupasamy
- 39.Paranthaman
- 40.Pamipathan
- 41.Muthumanickam



- 42.Kumar
- 43.Sajith
- 44.Gopal
- 45.Irunggjithprabhu
- 46.P.Anand
- 47.Duraisampath
- 48.Elango
- 49.Krishnamurthy
- 50.Krishnamurthy
- 51.Deenadayalan
- 52.Murugan
- 53.Karunamurthy
- 54.Kathiravan
- 55.Karumalaiappan
- 56.Rajesh Kannan
- 57.Madheshwaran
- 58.Balamurugan
- 59.Thiyagarajan
- 60.Prabaharan
- 61.Ramachandran
- 62.Chandrasekaran
- 63.Mayilsamy
- 64.Rasakumar
- 65.Saravanan
- 66.Arul
- 67.Sirpirajan
- 68.Manikandan
- 69.Karthik
- 70.Velubalan
- 71.Nagarajan
- 72.Siva
- 73.Prabaharan
- 74.Suresh
- 75.Saiprakash
- 76.Periyarselvam
- 77.Mohan
- 78.Ramesh
- 79.Saravana Kumar
- 80.Kumaresan
- 81.Kamalakannan
- 82.Parthasarathy
- 83.Annamalai
- 84.Tamilmuthu
- 85.Natarajan
- 86.Jagannathan
- 87.Dravidan
- 88.Jayaraman
- 89.Rajendran
- 90.Seeni. Viduthallai Arasu
- 91.Kathiravan
- 92.Karikalai
- 93.Narthigan



94. Paramathma
95. Vasanth
96. Saravanan
97. Sasikumar
98. Selvarasu
99. Thambu Kalidash
100. Kumaran
101. Elango
102. Kumaragurubaran
103. Dhandapani
104. Kesavan
105. Veera Prabaharan
106. Saravanan
107. Madhu
108. Gunasekaran
109. Silambarasan
110. Rajan
111. Periyar Mani
112. Vetrivendan @ Anandakrishnan .. Petitioners/
Accused Nos.1 to 112

Vs.

1. The Inspector of Police,
Srirangam Police Station,
Trichy City.
Crime No.891 of 2012 .. 1st Respondent/ Complainant

2. A. Arun,
Sub Inspector of Police,
Government Hospital Police Station,
Trichirappalli. .. 2nd Respondent /
Defacto Complainant

PRAYER: The Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the Calendar Case in C.C.No.14 of 2013 on the file of the learned Judicial Magistrate No.III, Tirichirappalli, and to quash the same.

In Cr1.O.P(MD)No.9578 of 2013:

1. K. Ramakrishnan
2. V. Saravanan
3. Seenii Viduthalai Arasu
4. Jeganathan ... Petitioners /
Accused Nos.1,3,4 and 5

Vs.

1. The Inspector of Police,
Srirangam Police Station,
Trichy City.
Crime No.893 of 2012 .. 1st Respondent /Complainant



2.Renu Ganthan,
Sub Inspector of Police,
Srirangam Police Station,
Trichy City.

.. 2nd Respondent/
Defacto Complainant

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PRAYER: The Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the Charge Sheet in P.R.C.No.4 of 2013 on the file of the learned Judicial Magistrate No.III, Tiruchirappalli, and to quash the same.

For petitioners : Mr.S.Duraisamy
in both petitions

For Respondent No.1 : Mr.A.Robinson
in both petitions Government Advocate (Criminal Side)

For Respondent No.2 : No appearance
in both petitions

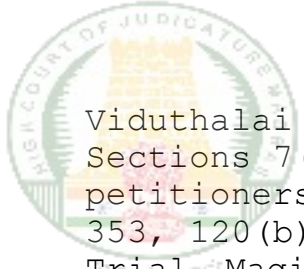
COMMON ORDER

Since, both these two petitions are inter-linked, they are taken up together, heard and disposed of by way of this common order.

The petitioners in CrI.O.P.(MD).No.9577 of 2013 stand accused in C.C.No.14 of 2013 on the file of the learned Judicial Magistrate No.III, Trichy for the offences under Sections 143, 188, 341,153(A), 294(b), 506(ii), 353, 120(b), 34 IPC r/w 7(1) (A) CLA Act.

2. The case of the prosecution is that on 20.10.2012 at around 11.15 a.m., the petitioners herein assembled at Srirangam old bus stand, without getting prior permission eventhough prohibitory orders under Section 30(2) of the Police Act were in force. The Assembly was pursuant to the call given by Periyar Dravida Kazhaham to agitate against the naming of the restaurant run by one Krishnan at Srirangam in the name and style of "Sri Krishna Iyyar Traditional Bramanal Cafe". The said organisation had given a call for defacing the name board.

3. According to the prosecution, the petitioners shouted provocative slogans against the Brahmin community. They marched towards the said hotel. They prevented others and members of the general public from going to the Cafe. When the police stopped the petitioners, the petitioners pushed them away and also criminally intimidated the police. They also used abusive words against the police. Therefore, Crime No.891 of 2012 was registered on the file of Srirangam Police Station, based on the information lodged by one A.Arun, Sub Inspector of Police, Government Hospital Police Station, Trichy. The first respondent conducted investigation and filed final report. The learned Judicial Magistrate took cognizance of the final report against the petitioners Ramakrishnan, Saravanan, Seeni



Viduthalai Arasu, Prabakaran and Saiprakash for the offences under Sections 7(1) (A) of CLA Act and 506(ii) of IPC., and against all the petitioners under Sections 143, 188, 341, 153(A), 294(b), 506(ii), 353, 120(b), 34 IPC r/w 7(1) (A) CLA Act. Contending that the learned Trial Magistrate erred in taking the final report on file and issuing summons to them, the present petitions have been filed for quashing the said proceedings.

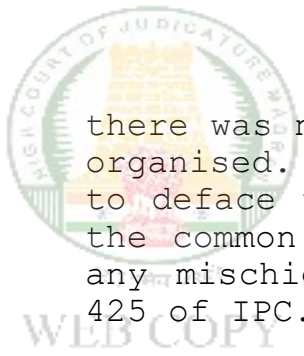
4. The petitioners in CrI.O.P.(MD).No.9578 of 2013 are 4 in number. The allegations against them are also broadly similar. They are also figuring as accused in the other case. The occurrence time alone is different. Crime No.893 of 2012 was registered on the file of the Srirangam Police Station, on the information lodged by one Renu Ganthan, Sub Inspector of Police of the very same police station. It is pending at the committal stage.

5. Heard Mr.S.Duraisamy, learned counsel appearing for the petitioners in both the petitions and Mr.G.Robinson, learned Government Advocate appearing for the first respondent police in both the petitions.

6. In both the cases, Section 153-A of IPC has been invoked against the petitioners. But, then as per Section 196 of Cr.P.C., no Court shall take cognizance of any offence punishable under Section 153-A of IPC., except with the previous sanction of the Central Government or the State Government. In these cases, it is the specific contention of the petitioners that the previous sanction of the Government has not been obtained. This Court went through the materials on record. The order of sanction is not enclosed with the final report. Therefore, the Court below could not have taken the final report on file. Therefore, this Court concurs with the submission of the learned counsel for the petitioners that taking the final report on file insofar as Section 153-A of IPC is concerned is bad in law.

7. The learned counsel appearing for the petitioners also contended that there is no material to show that the offence under Section 143 of IPC was committed. The learned counsel for the petitioner contended that to attract Section 143 of IPC., it must be shown that the petitioners constituted an unlawful assembly. Section 141 of IPC defines what is an unlawful assembly. It is the contention of the petitioners' counsel that none of the ingredients set out in Section 141 of IPC are made out in this case.

8. This Court is unable to agree with the said submission. Even in the affidavit filed in support of these petitioners, it has been mentioned that the petitioners were upset by the opening of the restaurant with the sign board "Sri Krishna Iyyar Parambariya Bramanal Cafe" at Srirangam. According to the petitioners, the sign board was wounding their sentiments and therefore they wanted its removal. The proprietor of the hotel did not oblige. The petitioners complained to the District Administration. Since even thereafter



there was no removal of the Board, the demonstration in question was organised. The petitioners did move towards the restaurant in order to deface the name board. Section 141 of IPC would be attracted if the common object of an assembly of 5 or more persons is to commit any mischief or criminal trespass. Mischief is defined in Section 425 of IPC., as follows:

"Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, cause the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

The petitioners are not owners of the name-board. Defacing it would definitely amount to mischief. In order to deface the name board, the petitioners will have to unnecessarily step into the property that belongs to the proprietor. This would again amount to criminal trespass. Therefore, this Court is of the view that the act of the petitioners is squarely attracted by the definition set out in Section 141 of IPC.

9. The petitioners are under the misconception that the hotel owner was indulging in an illegal act by naming his hotel as "Sri Krishna Iyyar Parambariya Bramanal Cafe". This Court will have to necessarily point out the sheer hypocrisy of the petitioners. In Madurai, where this Bench is situated, there are hotels named after castes and communities. 'Konar Mess' and 'Mudaliyar Idly Kadai' are two well known instances. Speaking for myself, I used to regularly go to "Reddiyar Mess" at Pondicherry for having my lunch during my college days. During journey through any highway, one can see hundreds of Bakeries and Coffee shops named as "Iyengar Bakery". This Court holds that this would fall within what is known in constitutional parlance as commercial speech. It is open to the proprietor concerned to name his hotel as "Sri Krishna Iyyar Parambariya Bramanal Cafe". This right is guaranteed both under Article 19(1)(a) and 19(1)(g) of the Constitution of India. It was not open to the petitioners to infringe in the exercise of the said right. It is not the case of the petitioners that untouchability was practised or that Brahmins alone were allowed to enter into the premises of the said hotel. If that is so, that would be a clear offence under law and also a violation of the fundamental rights guaranteed under Article 15 (2) (a) of the Constitution of India. The said provision states that no citizen shall, on grounds only of religion, race, caste, sex, place of birth or any of them, be subject to any disability, liability, restriction or condition with regard to access to shops, public restaurants, hotels and places of public entertainment. When that is not the case, it is not open to the petitioners to direct their ire at the said hotel.

10. In the final reports filed in both the cases it has been mentioned that prohibitory orders were in force. It is not the case



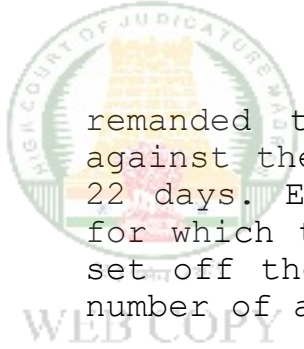
of the petitioners that they obtained permission from the authorities for conducting the agitation in question. This Court went through the statements recorded under Section 161 of Cr.P.C. It is seen that the petitioners indulged in abusive and provocative slogans. They also damaged the police barricades. When the police attempted to stop them from marching towards the restaurant, the petitioners pushed away the police and prevented them from discharging their duties.

11. The learned counsel for the petitioners submitted that the offence under Section 506(ii) IPC cannot be said to be made out. The petitioners' counsel contended that unless the defacto complainant felt intimidated, this charge cannot be invoked. While it is true that there are decisions to that effect, in the present case, the said argument cannot be accepted. If a police man is threatened with dire consequences by a rowdy or a politician, which appears to be happening these days quite often, the police man will definitely register an FIR against the person/s, who threatened him for committing the offence under Section 506(ii) of IPC. The policeman cannot say that he felt threatened. If this Court were to quash the FIR on the ground that the defacto complainant did not feel threatened or intimidated, then, the agressor would definitely go scotfree. Therefore, the element of being intimidated need not be present in all the cases.

12. The learned counsel appearing for the petitioners submitted that the petitioners are followers of Thiru. E.V.Ramasamy and that therefore they will not use indecent words. This Court is of the view that there is absolutely no logic in such a submission. When a mob assembles in defiance of prohibitory orders, there is bound to be a charged atmosphere and in all probability, aggressive and indecent words would have been uttered. There is nothing improbable in the allegation that the offence under Section 294 (b) of IPC was committed in this case.

13. Section 349 of IPC defines what is force. Section 350 of IPC defines what is criminal force. Applying the paramateres set out therein, this Court comes to the conclusion that there is prima facie material to show that the petitioners indulged in the offences alleged against them.

14. This Court therefore finds fault with the trial Magistrate only for having taken cognizance of the offence under Section 153-A of IPC. The other offences which the petitioners are charged are prima facie made out. But then, the question still remains as to whether, this Court should grant relief to the petitioners. There are cases in which the High Court would be justified in invoking its inherent power and quashing the proceedings in the interest of justice, eventhough, the offences are made out. The learned counsel for the petitioners made an emphatic statement that he would never justify an act of taking law into one's own hands. In these cases, the petitioners were arrested and



remanded to custody pursuant to the registration of the cases against them. They came out on bail after remaining in custody for 22 days. Even if the petitioners are found guilty of the offences for which they are charged, the trial Court in all probability will set off the sentence for the period already undergone by them. The number of accused in C.C.No.14 of 2013 is 112.

15. This Court went through the addresses given in the cause title. The petitioners hail from Coimbatore, Dindigul, Palladam, Thirupur, Trichy, Chennai, Pondicherry, Udumalpet, Pollachi, Madurai, Perambalur, Erode, Srirangam, Nagapattinam etc. It would cause immense hardship to all of them, if they have to attend the criminal trial. The event occurred way back in October, 2012. More than 4½ years have gone by. The acts of the petitioners, was motivated more by ideological. No doubt, there was exhibition of defiance and symbolic force by the petitioners. But there has been no actual commission of any violence. They were custody for over three weeks. Taking into account of these aspects, this Court is of the considered view that allowing the impugned proceedings to continue will not further the cause of justice. As already pointed out, the power under Section 482 of Cr.P.C., can be exercised to otherwise secure the ends of justice. For all the foregoing reasons to secure the ends of justice, the criminal proceedings impugned in these petitions stand quashed.

16. In the result, these Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

/True Copy/

Sub Assistant Registrar

To

1. The Inspector of Police,
Srirangam Police Station,
Trichy City.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+2CC to Mr.S.Doraisamy Advocate in SR.No.66651,66652.

PJL

DS/JC/SAR-4 :19.06.2018: 8P/5C

ORDER MADE IN
CRL.O.P (MD) Nos.9577 and
9578 of 2013
05.06.2018