

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 18.11.2019
Pronounced on : 21.11.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.14685 of 2013 and
Crl.M.P.Nos.1 & 2 of 2013

Damodhar

... Petitioner

Vs.

1.State by,
The Inspector of Police,
GB Police Station,
Pudhucherry,

2.Danusu,
Secretary of Puducherry Congress Party,
No.169, Kalavai Subraya Chetty Street,
Puducherry.

.... Respondents

[Impleaded the 2nd respondent as
per the order of this Court dated
12.07.2019 in Crl.O.P.No.14685 of
2013].

PRAYER: Criminal Original Petition is filed under Section 482 of
the Code of Criminal Procedure, to quash the proceedings in
S.T.R.No.171 of 2012 on the file of the Chief Judicial
Magistrate, Pudhucherry.

For Petitioner : Mr.V.Ashok Kumar for
Mr.SU.Srinivasan

For 1st respondent : M/s.D.Bharatha Chakravarthi
Public Prosecutor, Pondicherry

ORDER

The petitioner/accused S.T.R.No.171 of 2012, which is pending trial on the file of the Chief Judicial Magistrate Court, Pudhucherry for the offence under Section 153 of IPC and Section 5 of the Pondicherry Open Places (Prevention of Disfigurement Act, 2000) has filed this quash petition.

2.The 2nd respondent/defacto complainant had failed to appear before this Court, even after private notice being served to him on 17.07.2009 as well as the notice served through police, which he had received on 09.11.2019, proof of the same is filed. Further, the name of the 2nd respondent is printed in the cause list, despite the same there is no representation for the 2nd respondent enough opportunity was given to him. Since the case is of the year 2012, adjourning the case for the appearance of the 2nd respondent would only cause further delay.

3.The case of the prosecution is that on 10.03.2012 at the junction of Kamarajsalai-45 feet road, Rainbow Nagar, Puducherry, the petitioner, who is the President of Puducherry State BJP, erected an objectionable wall poster against the congress party in public place and thereby, wantonly given provocation with intent to cause riot. On the complaint received from the 2nd respondent, the 1st respondent registered a case in Crime No.88 of 2012 and on completion of the investigation filed the charge sheet, citing the witnesses LW1 to LW8 and annexing documents.

4.The learned counsel for the petitioner submitted that the petitioner is the State President of Bharatiya Janata Party (BJP), Pudhucherry. The defacto complainant/2nd respondent is the Secretary of the Puducherry Congress Party. Due to the political rivalry, the 2nd respondent lodged a false complaint against the petitioner. The 1st respondent without conducting proper investigation had mechanically filed the charge sheet against him.

5.The learned counsel for the petitioner further submitted that the petitioner had reproduced the cartoon, which was published in New Indian Express, Pudhcherry edition dated 07.03.2012, on the date of declaration of results for the Assembly Elections conducted for Uttar Pradesh, Punjab, Utarkand, Manipur and Goa. As four out of five states, barring Manipur, the Congress had lost Assembly Elections in the other states. Hence, the said Indian Express had published a front page news item captioned "Hand Out, Rahul Hit". In connection

with the same, the cartoon was published. The petitioner had reproduced the said cartoon. In the republication, the petitioner had categorically stated that "Courtesy, Indian Express".

6. Further, there is no provocation for offence of rioting or any other offence committed, due to the display of the cartoon, which is an admitted fact. The 2nd respondent had merely stated that posting of such posters with the cartoon is insulting the Congress Party, therefore action should be taken against the New Indian Express and against the Bharatiya Janata Party, which would only go to show that he was attempting to curtail the freedom of speech and expression, which is a fundamental right of all the citizens.

7. The Hon'ble Apex Court and this Court in many of the cases and in the case of Maneka Gandhi Versus UOI reported in (1978 1 SCC 248) had found that the right and liberty of a person cannot be curtailed.

8. Further, from the statement of witnesses, it could be seen that LW1 is the defacto complainant, who had stated about the lodging of the complaint, LW2 is the attestation witness in the scene of occurrence, LW3 had identified the public poster, which was in display, LW4 and LW5 are the persons in whose presence, the display poster was removed, LW6 is the Police photographer, LW7 and LW8 are the Investigating Officers. None of the witnesses mentioned that there have been any provocation or rioting, occurred on the display of the above posters. Hence, the 1st respondent without conducting proper investigation had filed the charge sheet in this case.

9. The learned Public Prosecutor (Pondicherry) appearing for the 1st respondent submitted that the 2nd respondent had lodged a complaint on 10.03.2012. On receipt of the complaint, a case in Crime No.88 of 2012 was registered for the offence under Section 153 of IPC and Section 5 of the Pondicherry Open Places (Prevention of Disfigurement Act, 2000). After completion of the investigation, the 1st respondent filed the charge sheet, citing LW1 to LW8 and annexing documents. The posters exhibited in an open place to the public view, it is an objectionable, insighting and intended to outrage group of people against other group. The lower Court on considering the materials, has taken the case on file as S.T.R.No.171 of 2012.

10. Considering the rival submissions and on perusal of the materials produced, it is seen that the posters are nothing but the reprint and reproduction of the cartoons, which was

published in the Indian Express Pondicherry publication dated 07.03.2012. The posters were stuck on 10.03.2013, in which it has been clearly mentioned that "Courtesy Indian Express". Further, the 2nd respondent is none other than the political rival of the petitioner. None of the public had given any complaint nor any incident of provocation or riot committed. The learned Additional Public Prosecutor fairly submitted that there is no untoward incident in furtherance to the display of the posters. There is nothing to show that this post had incited any sections of citizen to act violent against any other sections of the citizen and in any case the reproduction of the cartoon published in the newspaper cannot said to be objectionable. The Apex Court in the case of Sherya Singhal Versus Union of India in W.P.No.167 of 2012 held references with regard to the freedom of speech and expressions.

"13. This leads us to a discussion of what is the content of the expression "freedom of speech and expression". There are three concepts which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1(a)). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in.[3] It is at this stage that a law may be made curtailing the speech Or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty & integrity of India, the security of the State, friendly relations with foreign States, etc. Why it is important to have these three concepts in mind is because most the the arguments of both petitioners and respondents tended to veer around the expression "public order"."

11. Thus it is seen that these posters are not reason for any untoward incident, law and order problem or any public problem. This Court is of the view that the printing of the post that to reproduction of a cartoon publication from a daily newspaper, would not attract the above offences and the freedom of speech and expression is the fundamental right, which cannot be curtailed, thwarted without sound reasons. In this case, no such justifiable reason is available. The right of a citizen or a political party to project their political views or criticism of another party cannot be brought under the restrictive clause

of "public order". Freedom of speech and expression is the fundamental right of all citizens. Therefore, the pendency of such proceedings is only abuse of process of law, which is liable to be quashed.

12.In the result, the proceedings in S.T.R.No.171 of 2012, pending on the file of the Chief Judicial Magistrate Court, Pudhucherry stands quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

vv2

To

- 1.The Chief Judicial Magistrate,
Pondicherry.
- 2.The The Inspector of Police,
GB Police Station,
Pudhucherry,
- 3.The Public Prosecutor(Pondicherry)
High Court, Madras.

+1 cc to the Government Pleader (P) sr97764

Cr1.O.P.No.14685 of 2013

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