

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.06.2019

CORAM

THE HONOURABLE MR. JUSTICE **N. ANAND VENKATESH**

Crl.OP No.15480 of 2019

and

Crl MP Nos.7658 & 7659 of 2019

1.S.M.Rafiq Ahamed
2.A.S.Ismail
3.A.K.Mohammed Hanifa
4.Mr.Shahul Hameed
5.S.M.Abbas

.. Petitioners

.Vs.

State rep.by its
The Inspector of Police,
Ukkadam Police Station,
Coimbatore.

..Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.271 of 2014, pending on the fil of the Judicial Magistrate Court-V, Coimbatore and quash the same.

For Petitioners : Mr.Mr.I.Abdul Basith

For Respondent : Mr.M.Mohamed Riyaz, APP

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in C.C.No.271 of 2014, pending on the file of the learned Judicial Magistrate-V, Coimbatore.

2. The petitioners have been arrayed in the Final Report as A-1, A-6, A-7, A-8 & A-9. The Final Report has been filed by the respondent Police for an offence under Section 505(2), and 188 of IPC and Section 71(A) of the Tamil Nadu City Police Act, 1888. As against A-1 the charge is u/s 188 IPC Section 71(XIX) and 71(A) of the Tamilnadu City Police Act, 1888, as against A-6, the charge is u/s 188 and 506(i) of IPC, Section 71(XIX) and 71(A) of the Tamilnadu City Police Act, 1888, as against A-7 to A-9 the charge is u/s 502(2), 506(i) and 188 of IPC r/w 109 IPC, Section 71(XIX) and 71(A) of the Tamilnadu City Police Act, 1888.

3. The learned counsel for the petitioners submitted that the Final Report is not maintainable as against any of the accused persons u/s 188 of IPC and the Court below ought not to have taken cognizance of the Final Report for this offence. In order to substantiate his arguments, the learned counsel for the petitioner brought to the notice of this Court, the judgment in **Jeevanandham and Others .Vs. State,**

rep. by Inspector of Police, and Another reported in 2018 2 LW (CrI) 606. The learned counsel further submitted that if this provision goes, then there is no offence made out as against A-1. Insofar as A-6 is concerned, the only other added offence is under 506(i) IPC and the allegations made in the Final Report does not made out an offence of criminal intimidation.

4. The learned counsel for the petitioners further developed his arguments by submitting that insofar as A-7 to A-9 are concerned, they have been roped in as accused persons only on the ground they have arranged for the meeting. The learned counsel submitted that the allegations made in the Final Report do not make out a case for abatement. Therefore, the learned counsel concluded his arguments submitting that the Final Report as against the petitioners is not sustainable and the proceedings have been pending right from the year 2014 onwards.

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5. The learned Additional Public Prosecutor submitted that the abusive words that have been used during the meeting has been reflected in the Final Report and had clearly makes out an offence u/s.505(2) IPC. The learned counsel submitted that the petitioners after

giving an undertaking to the Police that the meeting will be conducted

without causing any disturbance or any disharmony to any other religion or sect, the said undertaking has been violated and therefore the petitioners will have to necessarily face the trial before the Court below.

6. This Court has carefully considered the submissions made on either side and also the materials available on record.

7. The offence under Section 188 IPC which has been taken cognizance by the Court below, is totally unsustainable and the said charge has to be necessarily quashed in view of the judgment, referred supra, cited by the learned counsel for the petitioners.

8. Insofar as the offence under Section 506(i) of IPC is concerned, the reading of the entire Final Report does not make out an offence of criminal intimidation. It is a settled principle of law that empty threats by itself does not make out an offence of criminal intimidation unless there is some material to show that the threat is a real one. Useful reference can be made to the judgment of this Court made in **P.Palanivel .Vs. Inspector of Police, Velur Police Station, Namakkal District**, reported in **2012 2 MLJ (CrI) 154**.

9. Therefore, the charge under Section 506(i) is also not sustainable against any of the accused persons.

10. That leaves this Court with the charge of abatement under Section 109 of IPC. In order to constitute an offence of abatement, the petitioners must be shown to have indulged in instigating or conspiring or intentionally aiding the offence committed by the other accused persons. The only allegation that have been made against A-7 to A-9 is that they have arranged for the meeting and nothing more. The actual speech was made only by A-3 to A-5 and there are no materials to show that there was any positive act on the side of the petitioners to have abated the crime committed by A-3 to A-5. Therefore, the charge of abatement is also not sustainable against A-7 to A-9. The test of abatement as formulated by the Hon'ble Supreme Court in **Kishori Lal .Vs. State of M.P.** reported in **2007 10 SCC 797**, is not fulfilled in the present case.

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11. In view of the above, the proceedings pending as against the petitioners before the Court below is an abuse of process of Court and the same requires interference by this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

12. In the result, this Criminal Original Petition is allowed and the proceedings in C.C.No.271 of 2014, pending on the file of the learned Judicial Magistrate-V, Coimbatore, is hereby quashed, insofar as these petitioners are concerned. The Court below is directed to proceed further with the case insofar as the other accused persons are concerned and complete the proceedings within a period of three months from the date of receipt of copy of the order. Consequently, the connected miscellaneous petitions are closed.

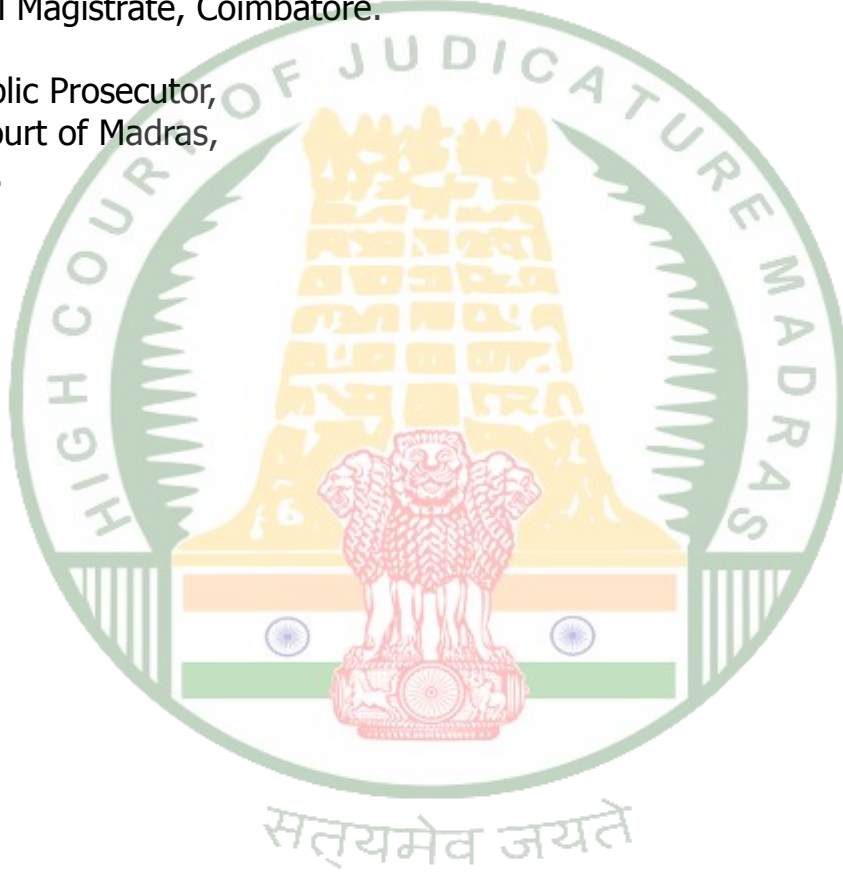
24.06.2019

Index : Yes/No
Internet : Yes/No
Speaking Order/Non Speaking Order
KP

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To

- 1.The Inspector of Police,
Ukkadam Police Station,
Coimbatore.
2. Judicial Magistrate Court-V,
Judicial Magistrate, Coimbatore.
- 3.The Public Prosecutor,
High Court of Madras,
Madras.



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