

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.11.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.25958 of 2014
and

M.P.No.1 of 2014 &
Crl.M.P.No.17275 of 2019

1.Ayyappan

2.Anbezhilan

3.Sankar ... Petitioners/Accused

Vs.

1.The Station House Officer,
Ariyankuppam P.S.
(Cr.No.66/2014),
Puducherry.

... 1st Respondent/
Complainant

2.J.Raguraman

... 2nd Respondent/
Defacto-complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the charge sheet in C.C.No.168 of 2014 on the file of the Judicial Magistrate No.I, Puducherry.

(Prayer amended as per the order of this Court in Crl.M.P.No.17274 of 2019 in Crl.O.P.No.25958 of 2014 dated 26.11.2019.)

For Petitioners : Mr.S.Doraisamy

For R1 : Mr.D.Bharathachakravathy,
Public Prosecutor (Puducherry)

For R2 : No appearance

O R D E R

This Criminal Original Petition is filed by the petitioners, who are A1 to A3 in Cr.No.66 of 2014 on the file of the first respondent had filed this quash petition to quash the charge sheet in C.C.No.168 of 2014 on the file of the Judicial Magistrate No.I, Puducherry.

2.During the pendency of the above said Criminal Original Petition, investigation has been completed and charge sheet came to be filed, which was taken on file in C.C.No.168 of 2014 on the file of the Judicial Magistrate No.I, Puducherry for the offence under Sections 153 (a) & (b) of IPC, 127 (A) of the Representation of the Peoples Act, 1951 and Section 3 and 12 of the Press and Registration of Books Act, 1867 r/w 34 IPC.

3.Originally this Criminal Original Petition was filed for quashing of FIR in Crime No.66 of 2011 dated 22.04.2014 on the file of the first respondent. When the above said Criminal Original Petition was taken up for final hearing, it was informed by the learned Public Prosecutor (Puducherry) that investigation in this case was completed and charge sheet came to be filed and taken on file as C.C.No.168 of 2014 by the Judicial Magistrate No.I, Puducherry. Thereafter petitioners had filed a Crl.M.P.No.17274 of 2019 in Crl.O.P.No.25958 of 2014 and this Court had allowed the above said miscellaneous petition and directed the registry to amend the prayer to quash the charge sheet.

4.The contention of the petitioner is that the second respondent, who is the Executive Magistrate, Flying Squad deputed to the election duty on the direction of the Additional Chief Electoral Officer, Puducherry have lodged the complaint stating that the pamphlets containing inappropriate picture and captions seized by the Supervisory flying squad functioning under the office of the Chief Electoral Officer, Puducherry. The pamphlets are stated to be circulated in Ariankuppam area. Therefore requested that the circulation of the pamphlets may be caused to be stopped and necessary action may be taken as per law. Based on the complaint a case came to be registered. The petitioners name does not find place in the FIR.

5.It is further submitted that the petitioners are the office bearers of Dravidar Viduthalai Kalagam, Puducherry and their office is situated at Ariyankuppam, Puducherry. It is a non-political social reformatory organization and did not contest in the elections. The petitioners' organization had taken a decision to oppose the Congress Party in the Parliamentary Elections held in April 2014 and to support the

N.R.Congress in the Puducherry Parliamentary Constituency. On the plain reading of the complaint and the FIR do not disclose any cognizable offence and hence it is liable to be quashed.

6.Further in support of the contention the learned counsel relied upon the decision of the Hon'ble Supreme Court in the cases of V.R.K.Srivastava reported in AIR 1989 SC 2222 and Bhajanlal's case reported in AIR 1992 SC 602.

7.Further submitted that as per Section 127(A) of the Representation of the Peoples Act. No person shall print or publish, or cause to be printed or published, any election, pamphlet or poster which does not bear on its fact the names and addresses of the printer and the publisher. No person shall print or cause to be printed any election pamphlet or poster. Unless a declaration as to the identity of the publisher, signed by him and properly attested. Further the copy of the declaration to be sent by the printer to the Chief Electoral Officer.

8.The contention of the learned counsel for the petitioners is that the pamphlets are not election pamphlets and the petitioners' organization is a non-political social reformatory organization and does not contest in the elections and it does not come under any election pamphlets or posters. Further the printer name viz., Modern Printers and its address have been conspicuously printed.

9.Further the learned counsel for the petitioners submitted that on a plain reading of the Section 153-A it shows that promoting enmity between different groups on grounds of religion, race, place of birth, residence language etc., and doing acts prejudicial to maintenance of harmony and public peace. Further any offence offendable under Section 153 (A) and (B) for taking cognizance only previous sanction of the Central Government or of the State Government or of the District Magistrate as the case may be is sine quo non. No such sanction has been obtained in this case. As per Section 3 and 4 of Press and Registration of Books Act, 1867 is not regulated since, the printer name, place of printing are available in the pamphlets.

10.The learned Public Prosecutor (Puducherry) submitted that in the charge sheet three witnesses are cited, LW1 is the Executive Magistrate, (Flying Squad - ARO VII) attached to the Election Office. LW2 and LW3 are the villagers from Ariyankuppam, who had come to the Police Station. At that point of time, the printed pamphlets is said to be handed over by the LW1 to the respondent/police. They have also mentioned the name of the petitioner being the reason for distribution of the pamphlets. LW4 is the Investigation Officer. Other than the

bald statements of LW1 to LW3 there are no materials to connect the petitioners.

11.The learned Public Prosecutor (Puducherry) has fairly submitted that no sanction has been obtained in this case to proceed under Section 153 (A) & (B) IPC. The objectionable pamphlets have not been produced in this case. In view of the same under Section 127 (A) of the Representation of the People Act, 1951 and Section 3 and 4 of the Press Registration of Books Act, 1857 r/w 34 IPC could not be sustained.

12.Further he had submitted that pursuant to the distribution of the objectionable pamphlets there has been no case reported causing disturbance in harmony, public peace and public tranquillity.

13.The learned counsel for the petitioners relied upon the orders of the Madurai Bench of Madras High Court in Cr1.O.P. (MD).No.19961 of 2018 and Cr1.O.P.(MD).No.8482 of 2010 for the point of prior sanction is sine quo non under Section 196 (1) of Cr.P.C. to prosecute a person under Section 153 (A) of IPC.

14.Considering the rival submissions and on perusal of materials, this Court feels that in the absence of sanction from the appropriate authority and in the absence of any objectionable pamphlets, the continuation of the proceedings would amount to abuse of process of law.

15.In view of the above, this Criminal Original Petition stands Allowed. Accordingly, the charge sheet in C.C.No.168 of 2014 on the file of the Judicial Magistrate No.I, Puducherry is hereby quashed. Consequently, the connected Miscellaneous Petitions are closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1.The Judicial Magistrate No.I,
Puducherry.

2.The Station House Officer,
Ariyankuppam P.S.
(Cr.No.66/2014),
Puducherry.

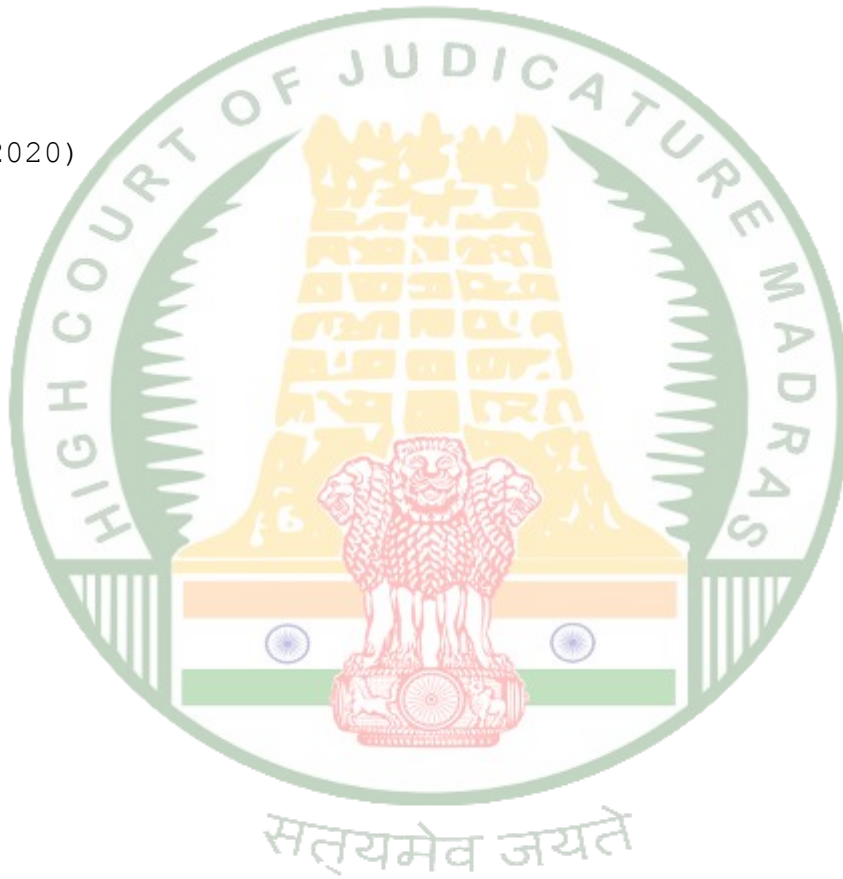
3.The Public Prosecutor, Pondicherry
High Court, Madras.

+1 CC to Mr.S.Doraisamy, Advocate sr 99570.

+1 CC to Public Prosecutor, Puducherry sr 99586.

CrI.O.P.No.25958 of 2014

KK(CO)
SP(29/01/2020)



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