

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Crl.O.P.No.19297 of 2019 and
Crl MP Nos.9874 and 9875 of 2019

Makesh

...Petitioner /
Accused No.2

Vs.

State Rep. by
The Inspector of Police,
Bhuvanagiri Police Station,
Cuddalore District.

...Respondent /
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Cr.P.C., to call for the records in connection with the Charge Sheet in C.C.No.76 of 2016 on the file of the District Munsif Cum Judicial Magistrate, Portnovo for the alleged offence under Section 151 of Cr.PC and 7(1) (a) of Criminal Law Amendment Act,2005.

For Petitioner :Mr.S.S.Jothivani
For Respondent :Mr.Mohammed Riyaz,
Additional Public Prosecutor.

ORDER

This petition has been filed seeking to quash the proceedings in C.C.No.76 of 2016.

2. The respondent police have registered an F.I.R in Crime No.220 of 2016 for an offence under Section 7(1) (a) of Criminal Law Amendment Act, 2005 and Section 151 of Cr.Pc. There are totally six accused persons in this case and the present petitioner is ranked as A2.

3. The case of the prosecution is that the accused persons had formed into an unlawful assembly and were planning to go against the Government and destroy the TASMACH shops and cause damage to the Government buses. This came to be known to the respondent police and therefore, an FIR came to be registered by the respondent police. After investigation, a final report has also been filed before the Court below and it has been taken cognizance for an offence under Section 7(1) (a) of Criminal Law Amendment Act, 2005 and Section 151 of Cr.Pc.

5. The learned counsel for the petitioner submitted that the Court below has not applied its mind, while taking cognizance of the offence. Section 151 of Cr.PC deals with arrest to prevent the commission of a cognizable offence. It is a mere preventive measure adopted by the police and it is not an offence *per se*. Therefore, the

learned counsel submitted that the Court below even without applying its mind had taken cognizance under Section 151 of Cr.PC.

6. The learned counsel for the petitioner further submitted that even insofar as the offence under the Criminal Law Amendment Act, the same is punishable below three years and therefore, the entire investigation is illegal, since it is non-cognizable and it would require orders passed under Section 155 of Cr.PC by the Magistrate even before investigation could be taken up. The learned counsel therefore, submitted that the proceedings are liable to be quashed.

7. Heard the learned Additional Public Prosecutor appearing on behalf of respondents.

8. This Court is completely in agreement with the submissions made by the learned counsel for the petitioner. The Hon'ble Supreme Court in **[Rajeev Choudhary Vs. The State of Delhi (NCT)]** reported in 2001 2 LW Crl. 866 and thereafter, followed by this Court in **[M/s.Sivaji Hi-Tec Foods Pvt. Ltd., Vs.The State Rep. by the Inspector of Police, IPR Enforcement Cell and another]** reported in 2019 2 LW

Crl. 70, have categorically held that the imprisonment up to three years in other laws, will fall under entry 3 of the Schedule I, classification II and it would require orders of the Magistrate under Section 155 of Cr.PC before undertaking the investigation. This procedure has not been followed in this case.

9. In view of the above, this Court is inclined to interfere with the proceedings of the Court below and accordingly, the proceedings in C.C.No.76 of 2016, on the file of the District Munsif Cum Judicial Magistrate, Portnovo is hereby quashed and the Criminal Original petition is allowed. Consequently, the connected miscellaneous petitions are also closed.

29.07.2019

Index : Yes / No
Internet : Yes / No
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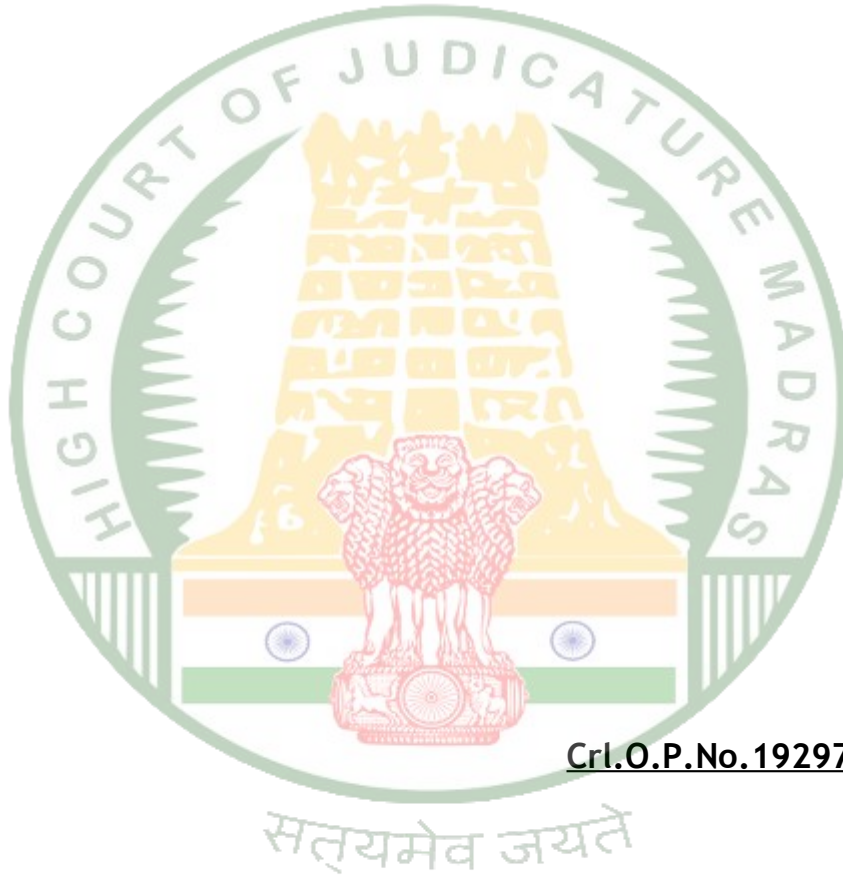
1. The District Munsif Cum Judicial Magistrate,
Portnovo

2.State Rep. by
The Inspector of Police,
Bhuvanagiri Police Station,
Cuddalore District.

3.The Public Prosecutor,
High Court, Madras.

N.ANAND VENKATESH, J

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