

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30.07.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

Cr1.O.P No.20346 of 2019

Pavayi

...Petitioner/Accused

Vs.

1.The State represented by  
The Sub-Inspector of Police  
Thiruchengode Town Police Station  
Namakkal District.  
Cr.No.263 of 2014. ....1<sup>st</sup> Respondent/Complainant

2.S.Paramasivam  
Co-operative Register  
Flying Squad-II  
Thiruchengode Legislative District  
Thiruchengode  
Nammakal District.  
....2<sup>nd</sup> Respondent/Defacto Complainant

PRAYER:Criminal Original Petition is filed under Section 482 of Cr.P.C., praying to call for the records relating to the S.T.C.No.1141 of 2017 on the file of Judicial Magistrate Court, Thiruchengode and quash the same against the petitioner.

For Petitioner : Mr.C.S.Saravanan

For Respondents : Mr.M.Mohamed Riyaz  
Addl. Public Prosecutor for R1

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ORDER

This petition has been filed seeking to quash the proceedings in S.T.C No.1141 of 2017 pending on the file of the Judicial Magistrate, Tiruchengode.

2. The respondent police have registered an FIR against the petitioner based on the complaint given by the second respondent, for an offence under Section 4(A) of T.N Open Places

(Prevention of Disfigurement) Act, 1959. After investigation, a final report has also been filed by the respondent police and the same has been taken on file before the Court below for an offence under Section 4(A) of Tamil Nadu Open Places (Prevention of Disfigurement) Act 1959.

3. The learned counsel for the petitioner submitted that the investigation and the final report that has been taken cognizance by the Court below is unsustainable in view of the fact that the offence in question is punishable with one year or fine and it falls under Entry-3 of the II Classification under Schedule-I of the Code of Criminal Procedure 1973. Therefore, it is a non-cognizable and bailable offence for which the respondent police ought to have obtained an order under Section 155 of Cr.P.C, before proceeding further with the investigation. Since the procedure has not been followed, the entire investigation is illegal and consequently, the proceedings will have to be quashed.

4. Heard the learned Additional Public Prosecutor appearing on behalf of the respondent police.

5. The facts of the present case is squarely covered by the judgment of the Hon'ble Supreme Court in Rajeew Chaudhary v. State (N.C.T) of Delhi reported in 2001 (2) L.W Criminal page 866, wherein the Hon'ble Supreme Court has held that in a case of this nature, the orders of Magistrate is mandatory under Section 155 of Cr.P.C before the investigation can take place. This judgment has been followed by this Court in M/s.Sivaji Hi-tech Foods Private Limited, v. State, rep. by the Inspector of Police, IPR Enforcement Cell-Unit-II, V.P.C - CID, Chennai-II, Egmore, Chennai-600 008 and another reported in 2019 (2) L.W Criminal, page 70.

6. In view of the above, the proceedings in S.T.C No.1141 of 2017 on the file of the Judicial Magistrate Court, Thiruchengode is hereby quashed and this Criminal original Petition is accordingly allowed.

Sd/-  
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. Judicial Magistrate Court,  
Thiruchengode.

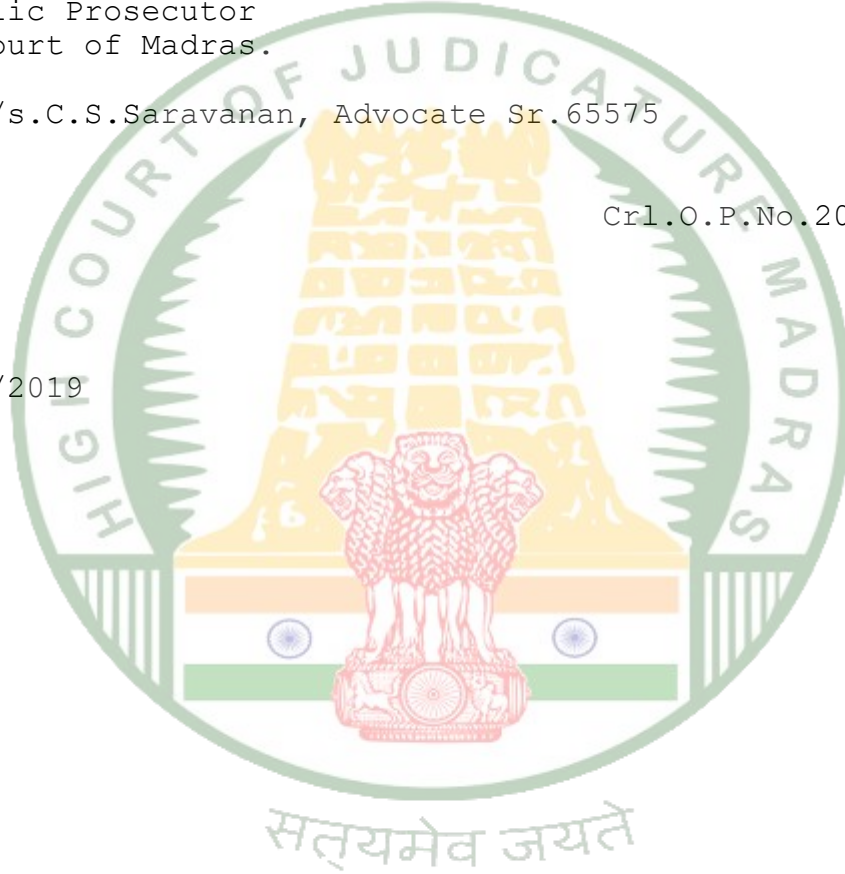
2.The Sub-Inspector of Police  
Thiruchengode Town Police Station  
Namakkal District.

3.The Public Prosecutor  
High Court of Madras.

+1cc to M/s.C.S.Saravanan, Advocate Sr.65575

Crl.O.P.No.20346 of 2019

cp[col]  
srg 05/09/2019



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