

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.04.2019

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.24869 & 25221 of 2017
and
CRL. M.P. NO.14518 & 14519 of 2017
and
CRL. M.P. NO.14365 & 14366 of 2017

1. Mr. M.E. Abdul Hakeem
2. Mr. Kader Batcha
3. Mr. Mohamed Rafik Kaja @ M.S.Mohamed
4. Mr. Khaja Mohideen
5. Mr. M.H. Shahul Hameed
6. Mr. Mohamed Shafeek
7. Mr. Kaja
8. Mr. Ismail
9. Mr. Mohamed Jinnah
10. Mr. Alauddin
11. Mr. Mohamed Rasool

... Petitioners
1 to 4 and 6 to 12 Accused
in Crl. O.P. No.24869 of 2017

1. Mr. Nasir Ahamed
2. Mr. Kaja Moideen S/o. Abdul Ajeez
3. Mr. Kaja Moideen S/o. Samsudeen
4. Mr. Shahul Hameed
5. Mr. Barmanullah
6. Mr. Akbar Ali
7. Mr. Mohamed Jubair
8. Mr. Badrudeen
9. Mr. Asanar

... Petitioners 4 to 7, 9
to 12 & 14th Accused
in Crl. O.P. No.25221 of 2017

-vs-

1. The Inspector of Police,
Mettupalayam Police Station,
Mettupalayam.

2. The Sub Inspector of Police,
Mettupalayam Police Station,
Mettupalayam.

... Respondents/Complainant
(in Both Petitions)

Common Prayer:- Criminal Original petitions are filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to Crime No.107 of 2017 and Crime No.108 of 2017 on the file of the District Munsif Cum Judicial Magistrate Court, Mettupalayam, and quash the same.

For Petitioners : Mr. I. Abdul Basith

For Respondents -R1 & R2 : M.Mohamed Riyaz
Additional Public Prosecutor
(in Both Petitions)

C O M M O N O R D E R

These Criminal Original Petitions have been filed to call for the records relating to C.C. Nos. 107 of 2017 and 108 of 2017 pending on the file of the District Munsif Cum Judicial Magistrate Court, Mettupalayam.

2. Since the issue involved in both these petitions is same and identical, these petitions are decided to dispose by a Common Order.

3. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor appearing for the respondents and perused the records carefully.

4. It is seen that the petitioners were charged for the offences under Sections 143, 285 r/w 511 of I.P.C. and registered in Crime Nos.107 of 2017 and 108 of 2018 respectively on the allegations that the petitioners have attempted to burn the effigy of the Prime Minister against the Central Government's Policy to demonetize the existing Rs.500/- and Rs.1000/- currency notes.

5. The learned counsel for the petitioner has relied upon the Judgment dated 19.06.2015 of the Hon'ble Division Bench of this Court in A. Santhos Yadav Vs. The Bar Council of Tamil Nadu & Others [MANU/TN/1904/2015] wherein in Paragraph Nos.8 & 9 is follows:

8. A careful reading of Section 285 would show that the mere burning of an effigy, by itself, was not made a punishable offence under the I.P.C. In fact, there is not even a reference in Section 285, I.P.C. to the burning of effigies. Section 285 is actually inserted in Chapter XIV of the I.P.C., which deals with offences affecting public health, safety, convenience, decency and morals. Section 285 itself is grouped along with offences dealing with negligence. The manner in which

Section 285 is worded would show that doing anything with fire or any combustible matter any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person, is made punishable. Therefore, acting rashly or negligently so as to endanger human life or in a manner likely to cause hurt or injury, is a sine qua non for making an act come within the meaning of Section 285.

9. Since there is no provision in the I.P.C., which makes the burning of effigies a punishable offence, the police invariably charge persons, who burn effigies, only for an offence under Section 285 or at the most under Section 286. In the case on hand, the very final report filed by the police shows that the petitioner was charged with an offence under Section 285 only for the act of burning the effigy of a political leader.

6. Section 285 of the Indian Penal Code, is extracted hereunder for reference:

"Negligent conduct with respect to fire or combustible matter: -

"Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, Or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter, Shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both".

7. On perusal of the final report, it shows that the petitioners have made attempt to burn the effigy of the Prime Minister. There is absolutely no material to show that the act of the petitioners in burning the effigy was likely to cause hurt or injury to any other person nor is there any material to show that they were acting rash and negligently so as to endanger human life. In such view of the matter, there is no prima-facie material to frame charge under Section 285 of I.P.C. against the petitioners.

8. In view of the above, Both Criminal Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

-sd-

Assistant Registrar

/TRUE COPY/

Sub Assistant Registrar

lbm

To

1. The Inspector of Police,
Mettupalayam Police Station,
Mettupalayam.

2. The Sub Inspector of Police,
Mettupalayam Police Station,
Mettupalayam.

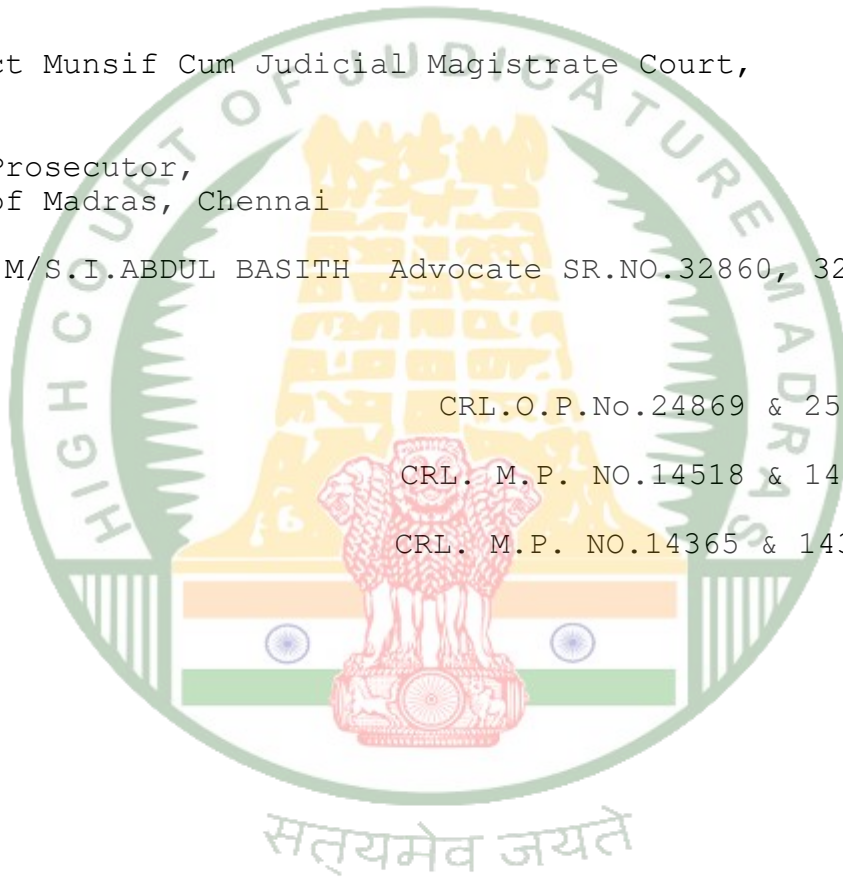
3. The District Munsif Cum Judicial Magistrate Court,
Mettupalayam

4. The Public Prosecutor,
High Court of Madras, Chennai

+2 CC to M/S.I.ABDUL BASITH Advocate SR.NO.32860, 32861/2019

CRL.O.P.No.24869 & 25221 of 2017
and
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and
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cm 26/06/2019



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