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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2019

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THE HONOURABLE MR. JUSTICE M.S. RAMESH

CrI.O.P.Nos.30784 and 30788 of 2019
and
CrI.M.P.Nos.16688,16689,16692
&16693 of 2019

E.Gurupatham

...Petitioner in both W.Ps

Vs

1.State By:

The Inspector of Police,
M-5, Vadavalli Police Station,
Coimbatore - 641 041.
(Crime Nos.473 & 474 of 2011)

2.P.Selvaraj

...Respondents in both W.Ps

COMMON PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the entire records connected with the case in C.C.Nos.112 & 113 of 2012, on the file of the learned Judicial Magistrate, Coimbatore and quash the same.

For Petitioner : Mr.C.Rajaguru in both W.Ps

For Respondents: Mr.C.Iyyapparaj,
Additional Public Prosecutor for R1,
in both W.Ps

C O M M O N O R D E R

The petitioner herein has been arrayed as the third accused for the offenses under Section 2 of Prevention of Insult to National Honour Act, 1971 r/w Sec.353, 309 and 149 of IPC. Along with the petitioner, 75 other persons have also been impleaded for the offences under Section 2 of Prevention of insult to National Honour Act, 1971 r/w Sec.353, 309 and 149 of IPC. The occurrence is said to have taken place on 23.02.2011 when a girl student, who is arrayed as the 70th accused was abused by the professor of the Government Law College. Subsequent to which,



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there was a strike and during the course of the strike, the students had torched the Indian National Flag. After investigation, the petitioner herein has been chargesheeted along with the others. A perusal of the statement of the witnesses, does not implicate specific overt act to the petitioner herein.

2. In identical circumstances, this Court by relying upon a decision of the Hon'ble Apex Court, quashed the proceedings on the ground that absence of specific overt act against each and every student would be fatal. The relevant portion of the said decision in the case of V. Subramanian Vs. The State through Inspector of Police, Kannankurichi Police Station, Salem, in CrI.O.P.No.14296 of 2017 dated 14.12.2017, reads as under:

"5. On a perusal of the complaint as well as the statement of the witnesses under Section 161 (3) Cr.P.C, it is seen that none of the students have been implicated with overt acts for constituting the offences for which they are charged for.

6. It is generally averred that they had joined together and threatened the staff by throwing stones and damaging the college properties. The omnibus statement may not constitute the offences against each and every individual student, since criminal trial is contemplated only on the basis of definite allegations of commission of the offence by every individual student.

7. The learned counsel for the petitioners relied upon the judgment of the Hon'ble Supreme Court in Sathish Mehra v. State of N.C.T. Of Delhi and Anr, AIR 2013 SC 506 and relevant paragraph of the said order read as follows:

"19. The view expressed by this court in Century Spinning's case (supra) and in 1. Muniswamy's case (supra) to the effect that the framing of a charge against an accused substantially affects the person's liberty would require a reiteration at this stage. The apparent and close proximity between the framing of a charge in a criminal proceeding and the paramount rights of a person arrayed as an accused under article 21 of the Constitution can be ignored only with peril. Any examination of the validity of a Criminal charge framed against an accused cannot overlook the fundamental requirement laid down in the decisions rendered in Century Spinning and



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Munisawamy (supra). It is from the aforesaid perspective that we must proceed in the matter bearing in mind the cardinal principles of law that have developed over the years as fundamental to any examination of the issue as to whether the charges framed are justified or not. So analysed, we find that in the present case neither in the FIR nor in the charge-sheet or in any of the materials collected in the course of investigation any positive role of either of the appellants, i.e., G.K.Bhat and R.K.Arora has been disclosed in the matter of renewal and encashment of the fixed deposits. All that appears against the aforesaid two accused is that one was the Chief Manager of the Bank whereas the other accused was at the relevant time working as the Senior Manager. What role, if any, either of the accused had in renewing the two fixed deposits in the sole name of Anita Mehra or the role that any of them may have had in the payment of the amount due against FD No.21/91 to Anita Mehra or in cancelling the FD No.9/92 renewed in the sole name of Anita Mehra and thereafter making a fresh FD in the joint Anita Mehra and Satish Mehra, is not disclosed either in the FIR filed or materials collected during the course of investigation or in the charge-sheet filed before the Court. There can be no manner of doubt that some particular individual connected with the Bank must have authorized the aforesaid acts. However, the identity of the said person does not appear from the materials on record. It is certainly not the prosecution case that either of the accused-appellants had authorised or even facilitated any of the aforesaid action. In such a situation to hold either of the accused-appellants to be, even prima facie, liable for any of the alleged wrongly acts would be a matter of conjecture as no such conclusion can be reasonably and justifiably drawn from the materials available on record. A criminal trial cannot be allowed to assume the character of fishing and roving enquiry. It would not be permissible



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in law to permit a prosecution to linger, limp and continue on the basis of a mere hope and expectation that in the trial some material may be found to implicate the accused. Such a course of action is not contemplated in the system of criminal jurisprudence that has been evolved by the courts over the years. A criminal trial, on the contrary, is contemplated only on definite allegations, prima facie, establishing the commission of an offence by the accused which fact has to be proved by leading unimpeachable and acceptable evidence in the course of the trial against the accused. We are, therefore, of the view that the criminal proceeding in the present form and on the allegations levelled is clearly not maintainable against either of the accused-appellant G.K.Bhat and R.K.Arora."

8. The learned Additional Public Prosecutor submitted that specific charges have been levelled against the accused based on the statements obtained from witnesses and if at all the petitioners have any grievance, they can cross-examine the witnesses at the time of trial and quashing the charge sheet is not warranted.

9. As seen in the above said decision of the Hon'ble Supreme Court, in the instant also, there is no specific overt act imputed against each and every student, with reference to the offences he is charged for. In the absence of the same, I am unable to comprehend as to how the trial would be proceeded to arrive at a logical conclusion by implicating each and every individual student.

10. Though the petitioners herein are 5 among the 49 students, the overt acts as against all of them are one and the same. None of the accused have been individually implicated and no specific overt acts are attributed against the individual students and hence, this Court is of the view that the petitioners herein who are arrayed as accused 34,35,31,2 and 38 are entitled to succeed in this Criminal Original Petition. "

3.The present case is also similar to the above cited decision, since the petitioner has not been implicated with specific overt acts. Hence, the impugned proceedings in



C.C.Nos.112 & 113 of 2012, on the file of the learned Judicial Magistrate, Coimbatore stands quashed so far as the petitioner herein is concerned.

4.The Criminal Original Petitions are allowed.
Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

tsg

To

1.The Judicial Magistrate,
Coimbatore.

2.Do-thro' Chief Judicial Magistrate,
Coimbatore.

3.The Inspector of Police,
M-5, Vadavalli Police Station,
Coimbatore - 641 041.

4.The Public Prosecutor,
High Court of Madras.

+2cc to Mr.C.Rajaguru, Advocate SR.99694, 99693

Cr1.O.P.Nos.30784 and 30788
of 2019 and Cr1.M.P.Nos.16688,
16689,16692 &16693 of 2019

EV(CO)
CB(30/01/2020)