



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :21.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

Crl.O.P.(MD).No.4259 of 2019

and

Crl.M.P.(MD).Nos.2584 and 2585 of 2019

1.M.P.Manikandan

2.C.Tamilprabhakaran @ Kamatchipandi

... Petitioners/ Accused Nos. 1 & 6

Vs.

1.State represented by the
Inspector of Police,
Thideer Nagar Police Station,
Madurai City
(Crime No.32 of 2018)

..1st Respondent/Complainant

2.Mr.K.John,
Sub Inspector of Police,
Thideer Nagar Police Station,
Madurai City.

...2nd Respondent / De facto
complainant

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the charge sheet in C.C.No.198 of 2018 on the file of the learned Judicial Magistrate No.V, Madurai in Crime No.32 of 2018 dated 20.01.2018 on the file of the respondent No.1 police for alleged offences under Sections 143, 188 and 285 of IPC pending the disposal of the Criminal Original Petition.

For Petitioners : Mr.T.Thirumurugan
For R-1 : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Crl. Side)

O R D E R

The present petition is filed to quash the charge sheet in C.C.No.198 of 2018 on the file of the learned Judicial Magistrate No.V, Madurai.

2.Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.side) appearing for the first respondent.
<https://hcservices.ecourts.gov.in/hcservices/>



3. The case was registered by the first respondent police for the offences under Sections 285, 143, and 188 IPC on the allegation that the petitioners and others were burning the effigy of a political leader.

4. The learned Government Advocate (Crl.Side) appearing for the first respondent would submit that after completion of investigation, case has been charge sheeted in C.C.No.198 of 2018 on the file of the learned Judicial Magistrate No.V, Madurai

5. The learned counsel for the petitioners has relied on the judgment of this Court in **A.Santhos Yadav Vs.the Bar Council of Tamil Nadu, Chennai** [2015(40 CTC 317] wherein it has been held as follows:

'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 IPC. In fact, there is not even a reference in Section 285 IPC to the burning of effigies'.

The learned counsel appearing for the petitioners has annexed the copy of the said judgment in typed set of papers and he prays for quashing the proceedings in this case also.

6.1 Any complaint under Section 188 I.P.C., cannot be taken cognizance and it is not cognizable offence. This Court on perusing the papers satisfied that Section 143 IPC is inserted only to get over the initial lapse in not preferring the complaint for the alleged commission of offence under Section 188 IPC.

6.2 This Court vide its judgment in **Jeevanandham and Others Vs. State rep. By Inspector of Police, Velayuthampalayam Police Station, Karur District and another** [2018-2-L.W.(Crl.)606] has already held that the court can take cognizance under Section 188 IPC only on the basis of a complaint preferred before the Magistrate by the concerned public servant. This Court is in agreement with the reasoning of the said judgment.

7. In view of the above, the proceedings in C.C.No.198 of 2018 on the file of the learned Judicial Magistrate No.V, Madurai is hereby quashed.

8. In fine, this Criminal Original Petition is allowed. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CRL SIDE)

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To

1.The Judicial Magistrate No.V,
Madurai.

2.The Inspector of Police,
Thideer Nagar Police Station,
Madurai City

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1. C.C. To Mr.T.Thirumurugan Advocate SR.No.56456

Cr1.O.P. (MD) .No.4259 of 2019

and

Cr1.M.P. (MD) .Nos.2584 and 2585 of 2019

cm

TK/SAR. /17.05.2019/3P/5C