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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :26.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE N.SESHASAYEE

Cr1.O.P. (MD) .No.6072 of 2019

and

Cr1.M.P. (MD) .Nos.3930 and 3931 of 2019

Vanaraja

... Petitioner/ Accused No.3

Vs.

1.State represented by the
Inspector of Police,
Sivakasi Town Police Station,
Virudhunagar District
(Crime No.245 of 2016)

..1st Respondent/Complainant

2.Mr.Sakthi Manikandan

...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 in the case in S.T.C.No.396 of 2019 on the file of the Judicial Magistrate Court No.1, Sivakasi and quash the same as against the petitioner/accused No.3 as illegal.

For Petitioner : Mr.M.Jothi Basu

For R-1 : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Cr1. Side)

O R D E R

The present petition is filed to quash the charge sheet in S.T.C.No.396 of 2019 on the file of the Judicial Magistrate Court No.1, Sivakasi, as against the petitioner/accused No.3.

2.Heard the learned counsel for the petitioner and the learned Government Advocate (Cr1.side) appearing for the first respondent.

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.

<https://hcservices.ecourts.gov.in/hcservices/> The learned Government Advocate (Cr1.Side) appearing for the first respondent would submit that after completion of investigation, case has been charge sheeted in S.T.C.No.396 of 2019



on the file of the Judicial Magistrate Court No.1, Sivakasi

5. This Court in **A. Santhos Yadav Vs. the Bar Council of Tamil Nadu, Chennai** [2015(40 CTC 317)] has 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'.

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. Turning to allegation of burning an effigy, though it might involve defalcation, yet it cannot be said that it will endanger human life.

7. In view of the above, the proceedings in S.T.C.No.396 of 2019 on the file of the Judicial Magistrate Court No.1, Sivakasi, is hereby quashed.

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

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar (CS)

CM

To

1. The Judicial Magistrate Court No.1,
Sivakasi

2. The Inspector of Police,
Sivakasi Town Police Station,
Virudhunagar District



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

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+1CC TO MR.G.M.LAW OFFICE, Advocate Sr. No. 63166

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and
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KG(CO)
TR (23.05.2019) 3P 5C