



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16/02/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

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Crl.O.P.(MD)No.22234 of 2018

and

Crl.MP(MD)No.10368 of 2018

1.K.Senthilkumar @ Senthilmallar
2.K.Perumal Samy : Petitioners/A1 and A2

Vs.

1.State through
The Inspector of Police,
Sattur Taluk Police Station,
Virudhunagar District. : R1/De jure complainant

2.Mr.A.Alagusundaram
Village Assistant,
O.Mettupatti Village,
Sattur Taluk,
Virudhunagar District. : R2/De-facto Complainant

Prayer:Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the entire records in connection with the case in SC No.153 of 2016 pending on the file of the Assistant Sessions Court/Sub Court, Sivakasi, and quash the same as illegal.

For Petitioners : Mr.S.Malaikani

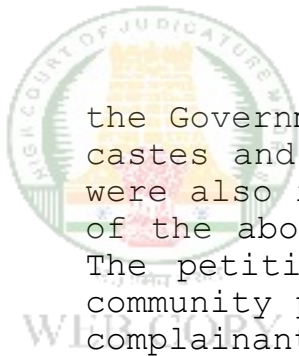
For Respondents : Mr.SS.Madhavan
Government Advocate (Crl. Side)

O R D E R

This petition has been filed by the petitioners seeking quashment of the entire proceedings in SC No.153 of 2016 pending on the file of the Assistant Sessions Court/Sub Court, Sivakasi.

2.The case of the prosecution in brief:-

On 19/06/2013 at about 11.00 am, the 2nd petitioner issued a book titled "Meendelum Pandiar Varalaru", which was prohibited by
<https://hcservices.ecourts.gov.in/hcservices/>



the Government of Tamil Nadu, for its provocative words against some castes and pamphlets to the gathering people in front of his house were also issued. At that time, A1 was found in possession of copies of the above said 'Meendulum Pandiar Varalaru' books and pamphlets. The petitioners alleged to have made bad comments upon the other community people. So based upon the complaint given by the de-facto complainant, a case in Crime No.333 of 2013 was registered for the offences punishable under sections 124(A), 153(A), 153(B) and 295(A) of IPC.

3.After completing the investigation, final report was filed before the committal court and later, the case has been committed and now, it is taken on file in SC No.153 of 2016 and transferred to the Assistant Sessions Judge, Sivakasi. Now the petitioners are facing the above said charges.

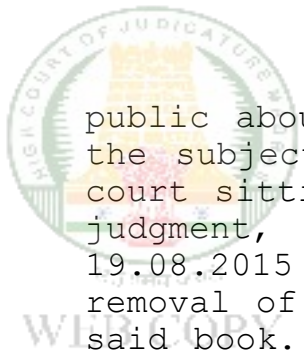
4.Seeking quashment of the above said criminal proceedings, this petition is filed on the ground that the first petitioner is a post-graduate decree holder in history and he has written the books, much after a research and tracing the history of the community to which the first petitioner belongs. On the date of the above said occurrence, no Government Order was in force, prohibiting or forfeiting the book. During the course of investigation only, it came to light that Government Order was passed prohibiting the publication of the book. So the investigation has been ordered. Based upon which only, FIR has been registered.

5.Challenging the notification, prohibiting the publication of the book, the first petitioner filed two writ petitions in WP(MD) Nos.17615 of 2013 and 31237 of 2016 and those writ petitions were allowed by ordering removal of certain offending portions in the book and the notifications forfeiting the book were set aside. So according to the petitioners, on the date of the registration of the FIR, no order was passed by the Government of Tamil Nadu, prohibiting the publication of the book. The 2nd respondent is not a competent person to lodge the complaint. The ingredients of the offences under sections 124(A), 153(A), 153(B) and 295(A) IPC are not at all attracted.

6.Heard both sides.

7.A right of fundamental right by expression has once again become the matter of issue between the Government of Tamil Nadu and the first petitioner/A1 herein. As mentioned above, he penned a book called 'Meendulum Pandiar Varalaru', which is the subject matter of the Government Order in No.525, prohibiting the publication and releasing of the book.

8.Now the case of the prosecution is that subsequent to the prohibition order, the first petitioner was found in possession of the above said book and pamphlets intimating the



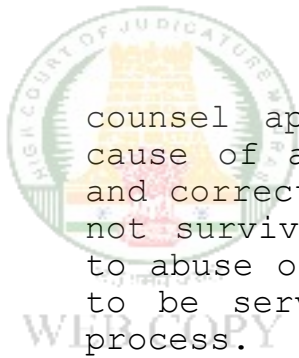
public about the release of the book. The prohibition order became the subject matter of two writ petitions as mentioned above. This court sitting in the Full Bench, heard the matter and by elaborate judgment, notification Nos.146, dated 30.05.2013 and 182, dated 19.08.2015 were quashed. Of course, by directing deletion and removal of some of the offending paragraphs and words in the above said book. The concluding portion of the above said order required to be reproduced hereunder. Para 40 runs like this:-

40.During the course of hearing, after perusal of the objectionable areas and the typed set of papers, it was pointed out to the petitioner that several portions in both the books are abusive against other castes and in the nature of spreading hatred and disharmony, thereby posing a threat to public order and security of the State. Thereafter, the petitioner has filed two separate memorandums, accepting to make certain alterations in the books. In reply, the State has raised objections to some alterations in certain portions, stating that the new alterations would not dissolve the objections. As most of the alterations have been accepted by the State, there cannot be any justification for the forfeiture to continue. Under such circumstances, the impugned orders are liable to be set aside, provided that the petitioner complies with the references and bibliography as pointed out by the first respondent, in addition to delete the provoking contents calling for a fight for separate land and against other linguistic people and castes. The petitioner must comply with the above directions by submitting a representation reflecting the corrections with a copy of corrected book and on such production, the first respondent must pass orders lifting the forfeiture within two weeks from thereon."

So the concluding portion of the above said judgment shows that offending paragraphs, which were in the opinion of the Government as well as the Hon'ble Full Bench of this court are in the nature of abusive, spreading hatred and disharmony among the society, should be deleted or removed. That was complied by the petitioner.

9.Of course, there were objections by the State Government with regard to some of the points. But however, the Hon'ble Full Bench of this court was of the considered view that since major portion of the deletion has been accepted by the Government, there was no justification for the prohibition order to continue. On that ground, the above said writ petitions were allowed.

<https://hcservices.ecourts.gov.in/hcservices/> 10. Pointing out the above said Full Bench judgment, the learned



counsel appearing for the petitioners would submit that now the cause of action has become infructuous, because of the alteration and correction in the above said book. Since the cause of action has not survived, continuation of the criminal proceedings will amount to abuse of process of law and court and no useful purpose is going to be served by subjecting the petitioners to undergo the trial process.

11.Now the question arises for consideration is whether the act of removing or deleting the offending paragraphs in the above said book will absolve the petitioners from the criminal liability.

12.It is contended by the petitioners that on the date of the above said occurrence, that is on 19/06/2013, no prohibition order was in force. But it is seen that the prohibition order was issued in notification No.146, dated 30/05/2013 and another notification was issued in No.182, dated 19/08/2015. The first notification was in force on the date of the alleged occurrence. So the petitioners cannot contend that no offence is attracted against them on the date of the above said occurrence. So on that ground, the petitioners cannot gain any support. But however, the second ground that has been urged by the petitioners is that in view of the judgment of the Full Bench of this court, the alleged criminal activities alleged to have been committed by them stand absolutely nullified or absolved.

13.It is a basic and fundamental criminal jurisprudence that if any offence was committed on the particular date of the occurrence, then subsequent events will not absolve the criminal liability. But at the same time, here the offences are not of heinous in nature, by exercising the freedom of expression, the 1st petitioner has penned the book, of course, by making offending opinion against the other community people. Now that has been removed as per the order of the Full Bench of this court. The petitioners have also not tried to sustain those offending paragraphs. No justification was also raised by the petitioners in this petition. So when the 1st petitioner has corrected themselves by making the correction and deletion in the book, subjecting the petitioners to undergo trial process, may take no-where and no purpose is going to be served in the light of the subsequent developments.

14.The learned counsel for the petitioners would submit that the conditional order passed by the Hon'ble Full Bench of this Court has been complied with and the offending words have been deleted from the book namely, 'Meendelum Pandiar Valararu'. He would further submit that subsequent order has not been passed by the Government inspite of submitting the compliance report. So, it is for the Government to take a call.

15.So this criminal original petition is liable to be allowed ~~and accordingly~~ it is **allowed**. The entire proceedings in respect of



SC No.153 of 2016 on the file the file of the Assistant Sessions Court/Sub Court, Sivakasi, is hereby quashed as against the petitioners. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (A.D.I)

// True Copy //

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

1. The Assistant Sessions Judge/Sub Judge,
Sivakasi
- 2.The Inspector of Police,
Sattur Taluk Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.MALAIKANI, Advocate (SR-6940[F] dated 18/02/2022)

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16.02.2022

RD(22.04.2022) 5P 5C