



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.09.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. (MD) .No.1605 of 2018

and

Crl.M.P. (MD) Nos.687 and 688 of 2018

K.Balasubramanian

..Petitioner

Vs.

1.State represented through
The Sub Inspector of Police,
Devakottai Town Police Station
Sivagangai District
Crime No.373 of 2011

2. V.S.Vishwam
Village Administrative Officer,
Iravucheri Group
Devakottai
Sivagangai District

..Respondents

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records of charge sheet in STC No. 572 of 2012 on the file of the Judicial Magistrate, Devakottai, Sivagangai and quash the same.

For Petitioner : Mr.A.HajaMohideen

For Respondent : Mr.K.Suyambulinga Bharathi
Government Advocate(Crl.Side)

O R D E R

This quash petition is filed to quash the criminal proceedings in STC No. 572 of 2012 on the file of the Judicial Magistrate, Devakottai, thereby having been taken cognizance for the offences under Sections 171(h),188 of IPC and Section 4(1) (A) of Tamil Nadu Open Place Disfigurement Act, 1989 as against the petitioner.



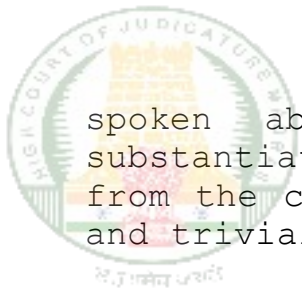
2.The case of the prosecution is that the petitioner has pasted posters in favour of the presidential candidate of Devakottai Municipal Presidential Election candidate Smt.JhansiRani without getting any permission from the Government in Devakottai Town inKaruthaoorani in the walls of Mena Mahal on 09.10.2011 by violating election rules and regulations and a case has been registered in crime No.373 of 2011 on the file of the first respondent, in which, the petitioner arraigned as accused. The case was taken cognizance by the learned Judicial Magistrate,Devakottai in S.T.C.No.572 of 2012. The said criminal proceedings is under challenge in this criminal original petition.

3.The learned counsel appearing for the petitioner would submit that the petitioner herein has not committed any offences as alleged by the prosecution. Due to political enmity, a false case has been foisted. The petitioner has not violated any rules and model code of conduct relating to election. He would further contend that the charge against the petitioner was not attracted, since there is no allegation against the petitioner that he has violated the election rules/model code of conduct. Further, he would contend that there is absolutely no witnesses have spoken about the occurrence and to connect the petitioner, there are no materials to proceed with the trial. When there is no material to proceed with the trial, the petitioner unnecessarily would not have put them an ordeal trial. Therefore, he prayed for quashment of the criminal proceedings.

4.Per contra, the learned Government Advocate(Crl.Side) would submit that there are specific allegations as against the petitioner to proceed with the trial. Further, he would submit that the petitioner is a habitual offender by committing this kind of crimes. Therefore, he vehemently opposed the quash petition and prayed for dismissal of the same.

5.Heard the learned counsel appearing for the petitioner and the learned Government Advocate(Crl.Side) appearing for the respondents/State and perused the materials available on record.

6.On a perusal of the charge as against the petitioner is concerned, the first respondent levelled the charge under Sections 171(h),188 of IPC and Section 4(1)(A) of Tamil Nadu Open Place Disfigurement Act, 1989 as against the petitioner. It is seen from the charge that that the petitioner has pasted posters in favour of the presidential candidate of Devakottai Municipal Presidential Election candidate Smt.JhansiRani without getting any permission from the Government in Devakottai Town inKaruthaoorani in the walls of Mena Mahal on 09.10.2011 by violating election rules and regulations . Except the official witnesses, no one has



spoken about the occurrence and no one was examined to substantiate the charge against the petitioner. It is also seen from the charge itself that the charges are very simple in nature and trivial. Section 188 reads as follows:

"188. Disobedience to order duly promulgated by public servant - Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, 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. Considering the above, this Court finds that for the simple charge, the petitioner cannot be put into an ordeal trial. Therefore, this Court is inclined to quash the criminal proceedings as against the petitioner.

8. In view of the above discussions, this criminal original petition is allowed and the criminal proceedings in STC No. 572 of 2012 on the file of the Judicial Magistrate, Devakottai, is quashed as against the petitioner herein. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

Sub Assistant Registrar (CS)

aav

To

1. Judicial Magistrate, Devakottai

2. The Sub Inspector of Police,
Devakottai Town Police Station

Sivagangai District



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

+1 CC to M/s.A. HAJA MOHIDEEN, Advocate (SR-85436[F] dated
05/09/2019)

**Crl.O.P. (MD) .No.1605 of 2018
and
Crl.M.P. (MD) Nos.687 and 688 of 2018
05.09.2019**

KM/ (20.09.2019) 4P 5C