



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2019

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD)No.16846 of 2019

and

Crl.M.P.(MD)No.10009 of 2019

1. Thanuskodi

2. Ramaraj

... Petitioners/Accused Nos.2 & 4

-Vs-

1.The Inspector of Police
Thalavaipuram Police Station,
Virudhunagar District
Cr No. 201/2014.

... 1st Respondent/Complainant

2.M. Muthaiah
Election Flying Squad,
Rajapalayam
Virudhunagar District.

... 2nd Respondent/Defacto
Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records in pursuant to the charge sheet in S.T.C.No.2192/2019 on the file of the Judicial magistrate No.II Srivilliputhur in Cr.No.201/2014 on the file of the Inspector of Police, Thalaivaipuram Police station, Virudhunagar District.

For Petitioners : Mr.R.Ragavendran

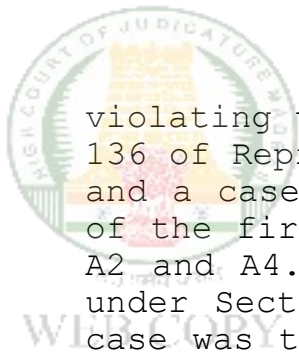
For R1 : Mr.K.Suyambulinga Bharathi
Government Advocate(crl.side)

O R D E R

This Criminal Original Petition has been filed to quash the charge sheet in S.T.C.No.2192of 2019 on the file of the Judicial Magistrate No.II, Srivilliputhur.

2.The case of the prosecution is that on 16.04.2014 at about 11.00 p.m, the 2nd respondent being a Election Flying Squad found that the DMK party candidate and party big-wigs canvassing votes with their party flag along with 6 vehicles near Thalavaipuram by

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violating the election rules and committed the offence under Section 136 of Representation of People Act r/w Sections 143, and 188 I.P.C. and a case has been registered in crime No.201 of 2014 on the file of the first respondent, in which, the petitioners are arraigned as A2 and A4. Subsequently, the first respondent altered the offence under Section 188 of I.P.C and filed the alteration report and the case was taken cognizance by the learned Judicial Magistrate No.II, Srivilliputtur in S.T.C.No.2192 of 2019. The said criminal proceedings is under challenge in this criminal original petition.

3.The learned counsel appearing for the petitioners would submit that the petitioners herein have contested in the parliamentary election as the candidate of political party of DMK in Tenkasi Constituency. He would further submit that the petitioners have not committed any offences as alleged by the prosecution. Due to political enmity, a false case has been foisted. The petitioners have not violated any rules and model code of conduct relating to election. He would further contend that the charge against the petitioners was not attracted, since there is no allegation against the petitioners that they have 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 petitioners, there are no materials to proceed with the trial. When there is no material to proceed with the trial, the petitioners 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 (criminal side) would submit that there are specific allegations as against the petitioners to proceed with the trial. Further, he would submit that the petitioners are 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 petitioners and the learned Government Advocate (criminal side) appearing for the respondent police and perused the materials available on record.

6.On a perusal of the charge as against the petitioners is concerned, the first respondent levelled the charge under Section 188 of I.P.C. as against the petitioners. It is seen from the charge that on 16.04.2014 at about 11.00 p.m, the 2nd respondent being a Election Flying Squard found that the the DMK party candidate and party big-wigs canvassing votes with their party flag along with 6 vehicles near Thalavaipuram by violating the election rules. 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



"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 trends 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 petitioners cannot be put into an ordeal trial. Therefore, this Court is inclined to quash the criminal proceedings as against the petitioners.

8.In view of the above discussions, this criminal original petition is allowed and the criminal proceedings in S.T.C.No.2192 of 2019, pending on the file of the Judicial Magistrate No.II, Srivilliputhur, is hereby quashed as against the petitioners herein. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

Sub Assistant Registrar(CS)

Ls

To

1.The Judicial magistrate No.II
Srivilliputhur.

2.The Chief Judicial Magistrate, Virudhunagar at Srivilliputhur.

3.The Inspector of Police
Thalavaipuram Police Station,
Virudhunagar District.



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

+1 CC to M/s.R. RAGAVENDRAN, Advocate (SR-99847[F] dated 20/11/2019

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JMN(02.12.2019) 4P : 6C