



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.11.2019

CORAM:

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

Crl.O.P.(MD)No.17932 of 2019

and

Crl.MP(MD)Nos.10539 & 10540 of 2019

WEB COPY

Neelamegam

...Petitioner/Sole Accused

-Vs-

1.The Sub-Inspector of Police,
Sellur Police Station,
Madurai City,
Madurai.
(Crime No.461 of 2016)

... 1st Respondent/Complainant

2.A.Selvaraj

... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records relating to the impugned charge sheet in S.T.C.No.234 of 2016 on the file of the learned Judicial Magistrate No.II, Madurai and quash the same as illegal.

For Petitioner : Mr.M.A.Palanisami

For R1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.Side)

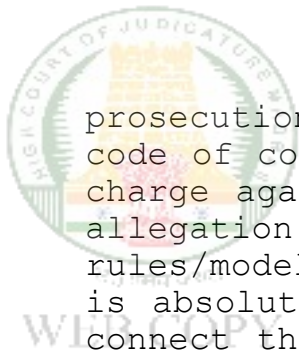
O R D E R

This petition has been filed to quash the proceedings in S.T.C.No.234 of 2016 on the file of the learned Judicial Magistrate No.II, Madurai.

2.The case of the prosecution is that on 07.03.2016, while the Election Commission Model Code was in force, the petitioner posted a Flag in Thathaneri Main Road, Madurai Town, belonging to Dravida Munnetra Kazhagam Party. Hence, the respondent police registered a case in Crime No.461 of 2016 for the offence under Sections 4 (1) (a), (1) (b) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959, and the same has been taken cognizance in S.T.C.No.234 of 2016 by the learned Judicial Magistrate No.II, Madurai. 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 has not committed any offences as alleged by the

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prosecution. The petitioner has not violated any rules and model code of conduct relating to election. He further submitted 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 first respondent/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 Section 188 of IPC and Section 4 (1) (a), (1) (b) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959 as against the petitioner. It is seen from the charge that on 07.03.2016, while the Election Commission Model Code was in force, the petitioner posted a Flag in Thathaneri Main Road, Madurai Town, belonging to Dravida Munnetra Kazhagam Party. 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 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 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 S.T.C.No.234 of 2016 on the file of the learned Judicial Magistrate No.II, Madurai, is quashed as against the petitioner herein. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

Sub Assistant Registrar(CS)

dss

To

1. The Judicial Magistrate No.II,
Madurai.
2. The Inspector of Police,
Sellur Police Station,
Madurai City,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.N.SATHEESH KUMAR, Advocate (SR-103068[F] dated 02/12/2019)

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VB(16.12.2019) 3P 5C