



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.03.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)No.4209 of 2020

and

Crl.M.P. (MD)Nos.2329 and 2331 of 2020

Kathiravan ... Petitioner/Sole Accused
-vs-

1.State represented by
The Inspector of Police,
Thallakulam Police Station,
Madurai,
In Crime No.2037 of 2017. ... 1st Respondent/Complainant

2.Rajkumar
Sub Inspector of Police,
Thallakulam Police Station,
Madurai City. ... 2nd Respondent/Defacto Complainant

PRAYER: Petition filed under Section 482 of the Criminal Procedure Code to call for the records pertaining to the impugned proceedings in S.T.C.No.593 of 2018 on the file of the learned Judicial Magistrate No.II, Madurai and quash the same as illegal.

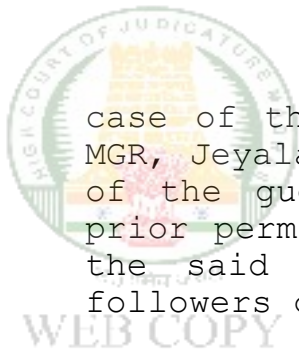
For Petitioner : Mr.S.Sadeskumar
For R1 : Mr.A.Robinson
Government Advocate (Crl.side)

O R D E R

This Criminal Original Petition has been filed for quashing the proceedings in S.T.C.No.593 of 2018 on the file of the learned Judicial Magistrate No.II, Madurai. It is now stated that this has since been transferred to Judicial Magistrate No.I Special Court, Madurai and renumbered as S.T.C.No.1851 of 2020. The petitioner is facing trial for the offences under Section 4(1) of Open Places (Prevention of Disfigurement) Act, 1959.

2.Heard the learned counsel on either side.

3.The petitioner is a general secretary of the forward block party. He is a former MLA. He is also a practicing advocate. The
<https://hcservices.ecourts.gov.in/hcservices/>



case of the prosecution is that a cutout carrying the pictures of MGR, Jeyalalitha and Muthuramalinga Thevar had been erected in front of the guest house in Alagarkoil Road, Madurai, without getting prior permission. The petitioner states that he is not a party to the said erection of cutout. It is quite possible that his followers out of enthusiasm had done it.

4.The petitioner expresses his regret for the act of his followers. He gives a further undertaking that he would instruct the members of his political party as well as his associates and followers that in future if they want to erect any cutout, they will have to necessarily adhere to legal process and not fall foul of Tamil Nadu Open places (Prevention of Disfigurement) Act, 1959. This undertaking given by the petitioner is placed on record.

5.The learned counsel for the petitioner points out that in this case, the informant is one M.Rajkumar, the Sub Inspector of Police, Tallakulam Police Station, Madurai. The very same informant had also investigated the case and filed the final report.

6.A mere look at the First Information Report as well as the final report would clearly indicate that the informant as well as the investigation officer are one and the same.

7.Ofcourse as pointed out by the learned Government Advocate, this issue is yet to be answered by the Larger Bench of the Hon'ble Supreme Court. But in this case, the fact that the informant as well as the Investigation Officer are one and the same, has certainly cause prejudice to the petitioner. This is because there is nothing on record to indicate that it was the petitioner who actually erected the cutout. Since there is no material to connect the petitioner with the aforesaid erection of cutout, if an independent investigation officer had conducted the investigation, certainly the outcome could have been different also. If the investigation officer also happens to be an informant he is bound to file the final report in such a way that stand in accord with the First Information Report. Ofcourse, I am not casting any aspiration on the second respondent herein. I am only answering a question of law.

8.The learned counsel for the petitioner drew my attention to order dated 27.10.2017 made in Crl.O.P(MD)No.15476 of 2010 in which it was held that the informant cannot be an investigating officer and filing of a charge sheet before the Court by him is illegal. I am of the view that the entire proceedings is not sustainable in the eye of law.

9.Therefore, S.T.C.No.1851 of 2020, on the file of the <https://hccerrecords.tnindiareservicesl> Magistrate No.I (Special Court), Madurai stands



quashed and this Criminal Original Petition stands allowed.
Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)

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To

1. The Judicial Magistrate No.I(Special Court), Madurai

2. The Judicial Magistrate No.II,
Madurai

3. The Inspector of Police,
Thallakulam Police Station,
Madurai.

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

+1 CC to Mr.S.SADESKUMAR, Advocate (SR-10634[F] dated 09/03/2020)

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06.03.2020

MK (20.03.2020) 3P 6C