



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.10.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.O.P (MD)No.10931 of 2020

and

CrI.M.P. (MD)Nos.4983 and 4984 of 2020

1.R.Murugan
2.R.Arunachalam
3.A.Manikandan

... Petitioners/Accused Nos.1 to 3

Vs.

1.State represented by
The Sub Inspector of Police,
Shenkottai Police Station,
Tenkasi District.
(Crime No.185 of 2018)

...1st Respondent/Complainant

2.Muthamil Selvan,
Sub Inspector of Police,
Shenkottai Police Station,
Tenkasi District.

...2nd Respondent/Defacto Complainant

PRAYER: Petition filed under Section 482 of Code of Criminal Procedure, to call for the records in S.T.C.No.1378 of 2018 on the file District Munsif Cum Judicial Magistrate, Shenkottai, Tenkasi District and quash the same.

For Petitioners: Mr.V.Karthirvelu, Senior Counsel

For Mr.K.Prabhu

For R1

: Mr.V.Neelakandan,

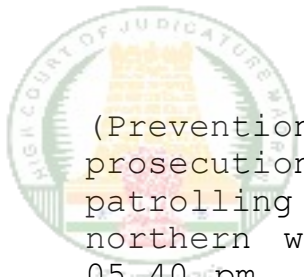
Additional Public Prosecutor

ORDER

Heard the learned senior counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the first respondent.

2.This criminal original petition has been filed for quashing the proceedings in S.T.C.No.1378 of 2018 on the file of the learned District Munsif Cum Judicial Magistrate, Sengottai.

3.The petitioners are facing trial for allegedly having committed the offence under Section 4(1) of Tamil Nadu Open Places



(Prevention of Disfigurement) Act, 1959. The case of the prosecution is that when the respondent police were on their patrolling duty, they came across certain wall posters on the northern wall of the Sengottai bus stand on 18.04.2018 at about 05.40 pm. When the list witness namely Grade-I constable attached to the Sengottai Police Station made enquiry, they came to know that the petitioners herein had affixed the said posters. In this regard, Crime No.185 of 2018 was registered on 18.04.2018 and after investigation final report was filed before the learned jurisdictional Magistrate Court. The case was taken on file and cognizance of the offence was taken and summons were issued to the petitioners herein. The trial is yet to commence.

4.The learned Additional Public Prosecutor appearing for the first respondent states that no case for quashing has been made out.

5.The learned senior counsel would point out that the offence in question would be attracted if any advertisement or poster is affixed on a wall without the written consent of the owner or occupier or person in management of the property. In this case the wall in question belongs to the local municipality. But then, no local municipal official has been examined as witness. They have also not been cited as a witness.

6.He would also point out that a reading of the statements recorded under Section 161 of Cr.P.C., would show that the petitioners have been implicated based on pure hearsay. There is nothing to connect the petitioners with the offending act.

7.More than anything else, no complaint has been received from the local municipality.

8.The learned senior counsel would point out that even though it has been originally claimed that the petitioners have caused disturbance to communal harmony, a reading of the contents of the posters would show that they pertain more to environmental and ecological causes and nothing do to with any religious aspects.

9.I am in full agreement with all the contentions raised by the learned senior counsel appearing for the petitioners herein. In this case, the aggrieved party has not filed any complaint against the petitioners herein. The respondent police on their own have chosen to register the FIR and instituted the impugned prosecution. The case was registered by the Sub Inspector of Police. It was he who filed the final report also. He is figuring as L.W.3. In this case there are no independent witnesses. There is absolutely nothing to connect the petitioners herein with the offending act. Therefore, I am of the view that continuance of the impugned prosecution will only amount to abuse of process of law. The impugned proceedings stand quashed.



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The criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CSIII)

// True Copy //

/ /2020

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 District Munsif Cum Judicial Magistrate,
Sengottai.
- 2.The Sub Inspector of Police,
Shenkottai Police Station,
Tenkasi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.PRABHU, Advocate (SR-20899[F] dated 03/11/2020)

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SS (CO)

KB (21.12.2020) 3P 5C