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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)No.9777 of 2016

and

Crl.M.P. (MD)No. 4920 of 2016

1.Isaac Selvaraj

2.Moses

... Petitioners

-vs-

1.The Inspector of Police,
Manur Police Station,
Tirunelveli District.

2.C.Selvakumar
Sub Inspector of Police,
Manur Police Station,
Tirunelveli District.

... Respondents

PRAYER: Petition filed under Section 482 of the Criminal Procedure Code to call for the records and quash the proceedings of the final report in STC No.173 of 2015 on the file of the Judicial Magistrate No.V, Tirunelveli dated 17.11.2015.

For Petitioner: Mr.L.Robert Chandrakumar

For R1 & R2 : Mr.A.Robinson,
Government Advocate(Crl.side)

O R D E R

The petitioners are facing trial in S.T.C.No.173 of 2015 on the file of the learned Judicial Magistrate No.V, Tirunelveli, for the offences under Sections 153-A and 295 of IPC. The prosecution case is that the petitioners are Christians and that they had unlawfully removed certain religious symbols considered sacred to the Hindus. Hence, Crime No.181 of 2015 was registered on the file of the Manur Police Station and after investigation, final report was also filed. The cognizance of the offence was also taken by the learned Judicial Magistrate No.V, Thirunelveli. This Court wanted to know whether sanction as contemplated in Section 196 of Cr.P.C., has been obtained. Section 196(1) reads as follows:

"196. Prosecution for offences against the State and for criminal conspiracy to commit such offence
(1) No Court shall take cognizance of-



(a) any offence punishable under Chapter VI or under section 153A, section 295A or subsection (1) of section 505 of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence, or

(c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government"

2.The learned Government Advocate on instructions from the concerned police officials submitted that no sanction has been obtained. Therefore, the Court below could not have taken cognizance of the offences under Section 153(A) of IPC, since it requires prior sanction from the State Government. Therefore, the impugned proceedings stand quashed in so far as Section 153(A) of IPC, is concerned.

3.But then, the learned Government Advocate would point out that the charge against the petitioner also pertains to Section 295 of IPC. Section 295 of IPC reads as follows:

"295. Injuring or defiling place of worship with intent to insult the religion of any class –

Whoever destroys, damages or defiles any place of worship, or any object held sacred by any class of persons with the intention of thereby insulting the religion of any class of persons or with the knowledge that any class of persons is likely to consider such destruction, damage or defilement as an insult to their religion, shall be punishable with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

4.From a reading of the final report one can note that the acts attributed to the petitioners, prima facie attract the offence under Section 295 of IPC.

5.The learned counsel for the petitioner would strongly contend that no such occurrence ever took place and that the place in which the religious objects are said to have been located is a patta land. But then, these are factual aspects. Therefore, the petitioner has to establish his defence in a regular trial before the Court below. I make it clear that none of the observations made herein will prejudice the petitioners' defence in the trial.

6.This Criminal Original Petition is partly allowed and the charges under Section 153(A) of IPC alone is quashed. The petitioners will face trial only for the offence under Section 295 of IPC. Considering the over all aspects, the personal appearance of the petitioners before the Court below is dispensed with.



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Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

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Sub Assistant Registrar(CS)

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To

1.The Judicial Magistrate No.V, Tirunelveli.

2.The Inspector of Police,
Manur Police Station,
Tirunelveli District.

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

+1 CC to Mr.I.ROBERT CHANDRAKUMAR, Advocate (SR-2676[F] dated
23/01/2020)

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22.01.2020

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