



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P. (MD)No.7758 of 2020

and

Cr1.M.P. (MD)Nos.3724 & 3725 of 2020

and

Cr1.O.P. (MD)No.1512 of 2021

and

CRL.M.P (MD)Nos.717 & 718 of 2021

1.Moogambigai S.Thirugnanasammantham

2.Kumar

3.Raja

4.Prabhakaran

5.Ramaesh

6.Anandan

7.Sudhakar

8.Murali

9.Thyagarajan

10.Mohanraj

11.Vadivel

12.Meenakshisundaram

13.Jeeva

14.Subramani

15.Gopalakrishnan

16.Vijayaragavan

17.Prakash

18.Krishnan

19.Jagadeesan

20.Muthukumarasamy

21.NachimuthuMohanasubbu

22.Manokaran

23.Gunasekaran

24.Ramesh

25.Velusamy

26.Surendar

27.Jothibas

28.gowtham

29.Vignesh

30.Sivakumar

31.Prabhu

32.Boopathy

33.Sekar

... Petitioners/Accused No.3 to 5,
8, 10 to 14,16 to 18, 20,22 to
24, 28, 29, 31, 32, 34, 38, 40,
41,43, 44, 47, 55, 57 to 60 and
70 in Cr1.O.P. (MD)No.7758/2000



V.Senthilbalaji

... Petitioner/Accused No.1 in
Crl.O.P. (MD)No.1512/2021

Vs.

1.The State rep.by

The Inspector of Police
Karur Town Police Station
Karur District.

... 1st Respondent/Complainant in both cases

2.S.Vinoth Kumar

... 2nd Respondent/Defacto Compliant in
both cases.

COMMON PRAYER: Criminal Original Petitions filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the S.T.C.No.150 of 2018, pending on the file of the Judicial Magistrate No.1, Karur and quash the as against the petitioners herein.

For Petitioners
(In Crl.O.P. (MD)No.
7758/2020)

: Mr.AR.L.Sundaresan
Senior Counsel for
Mr.AN.Ramanathan

For Petitioner
(In Crl.O.P. (MD)No.
1512/2020)

: Mr.AR.L.Sundaresan
Senior Counsel for
Mr.K.Balasubramani

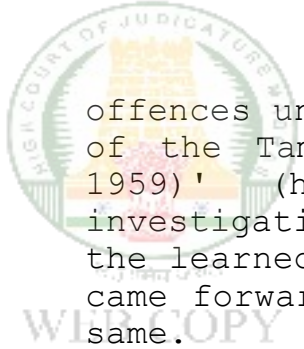
For Respondents
(In both Crl.O.Ps)

: Ms.Krithika Kamal
Govt.Advocate(Crl.Side)
for R1

COMMON ORDER

Crl.O.P. (MD)No.7758 of 2020 has been filed by the petitioners / accused Nos.3 to 5, 8, 10 to 14, 16 to 18, 20, 22 to 24, 28,29, 31, 32, 34, 38, 40, 41, 43, 44, 47, 55, 57 to 60 and 70 to quash the charge sheet in S.T.C.No.150 of 2018, pending on the file of the Judicial Magistrate No.1, Karur. Similarly, Crl.O.P. (MD)No.1512 of 2021 has been filed by the petitioner / Accused No.1 to quash the charge sheet in S.T.C.No.150 of 2018, pending on the file of the Judicial Magistrate No.1, Karur.

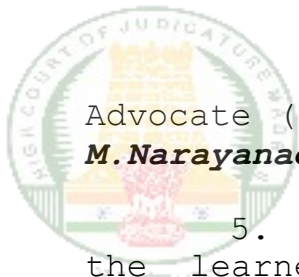
2. The case of the prosecution is that on 27.01.2018, the petitioners and others were formed unlawful assembly and blocked the traffic, thereby prevented the public. Besides, without any permission, they have also advertised their party symbol on both sides wall of the over bridge, belonged to the Highways Department, while there is promulgation under Section 30(2) of the Police Act, 1861. Hence, a compliant was made on 27.01.2018 and FIR in Crime No.91 of 2018 was registered against the petitioners for the



offences under Section 341, 143 & 188 of IPC read with 'Section 4(1) of the Tamil Nadu Open Places (Prevention of Disfigurement Act, 1959)' (hereinafter referred to as 'said Act'). After investigation, the same was taken on file in S.T.C.No.150 of 2018 by the learned Judicial Magistrate No.1, Karur. Hence, the petitioners came forward to file these Criminal Original Petitions to quash the same.

3. The learned Senior counsel appearing for the petitioners contended that the case is nothing, but result of political motive, as A1 is the opponent political party. The petitioners have just shown their protest against the Government and assembled themselves and they have no intention to commit any offence to overawe by criminal force, or show of criminal force or to commit any mischief or criminal trespass or other offence. Therefore, in the absence of any evidence to show that the accused were formed unlawful assembly, the offence under Section 143 of IPC has not been made out. Similarly, the materials collected by the prosecution in its entirety taken together does not make out an offence under Section 341 of IPC and the prosecution has recorded the statements only from the police personals. The statement did not indicate the wrongful restraint of any one. Similarly, it is the contention of the learned Senior Counsel appearing for the petitioners that the offence under Section 188 of IPC should not have been taken cognizance by the trial Court. Such cognizance is prohibited under Section 195 of Cr.P.C. Further it is the contention of the learned Senior Counsel appearing for the petitioners that in respect of Section 4(1) of Tamil Nadu Open Places (Prevention of Disfigurement Act, 1959), the maximum punishment is three years. The entire materials collected by the prosecution do not specify the ingredients of the offence under the said Act. Hence, it is submitted that continuing the prosecution case is only abuse of process of law and no offence is made out and the entire prosecution is actuated with malice and therefore, the same is liable to be quashed. In support of his submission, the learned Senior Counsel relied upon the judgment of this Court in **Jeevanandam and others Vs. State, Rep. By the Inspector of Police** reported in **2018-2-L.W. (Cr1) 606**.

4. The learned Government Advocate (Crl. Side) appearing for the first respondent submitted that the offence under Section 4 (1) of the said Act is a cognizable offence. Besides 341 IPC is also a cognizable offence and there is no bar under Law to investigate the offence under Section 188 IPC. What is prohibited is only for taking cognizance. Even if cognizance is taken, the entire proceedings shall not be vitiated in view of Section 460 Cr.P.c. Hence, it is submitted that the materials collected would clearly indicate that the offences under Sections 341, 143 and 188 of IPC read with Section 4(1) of the said Act have been made out and therefore, charge sheet as against the petitioners cannot be quashed. Hence, prays for dismissal of these Criminal Original Petitions. In support of her submission, the learned Government



Advocate (Crl. Side) relied upon the judgment of the Apex court in **M.Narayanadas Vs. State of Karnataka** reported in **(2003) 11 SCC 251**.

5. This Court has considered the rival submissions made by the learned counsel appearing on both sides and perused the materials.

6. It is well settled Law that the power of quashing of a criminal proceedings should be exercised sparingly, with circumspection and in rarest of rare cases. The court, is not justified in embarking upon an enquiry as to the reliability or genuineness of the allegations made in the FIR or the complaint on the basis of the evidence collected during investigation.

7. The Hon'ble Supreme Court in the case of **State of Haryana and others vs. Bhajan Lal and others** reported in **1992 Supp (1) SCC 335**, has held as follows:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercising of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide- i7 myriad kinds of cases wherein such power should be exercised:

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted



by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

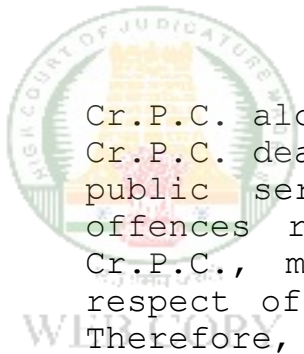
(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

8. Similarly, it is also well settled that while exercising the power under Section 482 Cr.P.C., the Court is not expected to express any views on merits related to the realm of appreciation of evidence to decide the credibility of the case put forward.

9. When the allegations in the FIR and the materials collected by the prosecution does not disclose the commission of any offence and make out a case against the accused and the prosecution itself is instituted with an ulterior motive for wreaking vengeance, this Court can exercise power under Section 482 Cr.P.C. With regard to quashing of the charge sheet for the offence under Section 188 IPC, this Court in **Jeevanandam and others Vs. State, Rep. By the Inspector of Police** reported in **2018-2-L.W.(Crl) 606** has relied a judgment in **V.Gowthaman and others Vs. State rep. By its Inspector of Police, St.Thomas Mount Police Station, Chennai** reported in **2018 (4) CTC 252** and held that the cognizance taken by the Magistrate under Section 188 IPC is not permissible and therefore, the prosecution of the accused under Section 188 IPC stands quashed.

10. In the present cases also FIR has been filed for various Sections including Section 188 I.P.C. Though Section 460 Cr.P.C., deals with irregularities, which do not vitiate the proceedings, the contention of the learned Government Advocate (Crl. Side) appearing for the first respondent that mere taking cognizance of the offence punishable under Section 188 IPC by the Magistrate does not vitiate the proceedings, cannot be countenanced for the simple reason that the irregularities only with regard to taking cognizance of an offence under clauses (a) and (b) of sub-Section (1) of Section 195



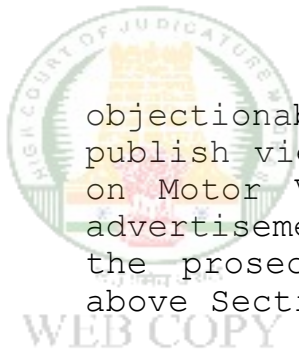
Cr.P.C. alone would not vitiate the proceedings, whereas Section 195 Cr.P.C. deals with prosecution for contempt of lawful authorities of public servants, for offences against public justice and for offences relating to documents given in evidence. Section 195 Cr.P.C., makes it clear that no Court shall take cognizance in respect of the offence punishable under Sections 172 to 188 IPC. Therefore, the contention of the learned Government Advocate in this regard cannot be countenanced. Therefore, the Court have no power to take cognizance for the offence under Section 188 IPC. Admittedly, there is no compliant whatsoever made for the offence under Section 188 IPC, reflecting the ingredients of the order promulgated and violated. Therefore, the charge as against the petitioners under Section 188 IPC has to necessarily be quashed.

11. Insofar as Section 4(1) of the said Act is concerned, the learned Senior counsel relied a judgment of this Court in **Jeevanandam and others Vs. State, Rep. By the Inspector of Police** reported in **2018-2-L.W. (Cr1) 606**, in which the learned Single Judge held that '*this offence is punishable with 3 months imprisonment and therefore, is a non cognizable offence. The respondent police cannot register an FIR, without getting a specific order from the Magistrate under Section 155 of Cr.P.C.*' It has not been brought to the knowledge of the learned single Judge about the Section 8 of the said Act. Section 8 of the said Act reads as follows:

'8. Offences under this Act to be cognizable:-

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (central Act II of 1974) any offence punishable under this Act shall be deemed to be a cognizable offence within the meaning of that Code.'

Therefore, the contention of the learned Senior Counsel appearing for the petitioners that Section 4(1) of the said Act is a cognizable offence and prior permission of the Magistrate is required to enquire the above offence is not sustainable. If the provision of Section 8 of the said Act is brought to the knowledge of the learned Single Judge, this Court would not have recorded that it is only a non-cognizable offence. Be that as it may. Now the allegation in the FIR appears that the accused have advertised the symbol of their political party. The prosecution has recorded the statement of the police officials and examined the two witnesses from the Highways department. No details whatsoever has been spoken by any one of the witness as to the nature of the symbol or advertisement made in the wall of over bridge, belonged to the Highways Department. Merely on the general allegation, without any particulars as to the nature of advertisement made, the offence under Section 4(1) of the said Act would not be made attracted. The very object of the Tamilnadu Open Places (Prevention of Disfigurement) Act, 1959 is to prevent disfigurement by



objectionable or unauthorized advertisement of placed open to publish view (and to prevent pasting of posters in such places) and on Motor Vehicles in the State of (Tamil Nadu). The nature of advertisement has not been mentioned in the statement recorded by the prosecution. Therefore, continuing the prosecution for the above Section is also abuse of process of law and waste of time.

12. With regard to offence under Section 143 IPC is concerned, this Court on perusal of the entire statement recorded by the prosecution, finds that the same would not constitute the offence and there is no material or statement from any witness to show that the accused were formed an unlawful assembly to overawe by criminal force, or show of criminal force or to commit any mischief or criminal trespass or other offence. Therefore, in view of the general statement that the accused have gathered and blocked the traffic, the offence would not be constituted. Similarly from the submission of other witness, it is seen that no particulars whatsoever is available to show that who was restrained wrongfully by such act of the accused. None of the persons, allegedly restrained by such activities of the accused, has been examined during investigation. Therefore, the materials collected by the prosecution do not disclose the commission of such offence and will not make out the case as against the accused. Therefore, lack of any evidence to prove the offence, the continuation of proceedings is nothing but abuse of process of law. Infact, it will force more than 70 people to undergo the ordeal of trail without any substance in the charges.

13. Hence, this Court is inclined to quash the proceedings in S.T.C.No.150 of 2018, on the file of the Judicial Magistrate No.1, Karur as against the petitioners herein. Accordingly, the proceedings in S.T.C.No.150 of 2018, on the file of the Judicial Magistrate No.1, Karir is hereby quashed as against the petitioners herein.

14. In the result, both the Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2021

Sub Assistant Registrar(CS)

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To

<https://hcservice.judiciary.gov.in/hcservice44> The Court, Judicial Magistrate No.I, Karur.



2.The Chief Judicial Magistrate, Karur.

3.The Inspector of Police
Karur Town Police Station
Karur District.

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

CRL.O.P. (MD)No.7758 of 2020
and CrI.M.P. (MD)Nos.3724 & 3725 of 2020
and CrI.O.P. (MD)No.1512 of 2021
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