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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.08.2021

Pronounced on : 16.09.2021

CORAM :

THE HONOURABLE **Mr.JUSTICE G.ILANGO VAN**

Crl.O.P.(MD)No.10360 of 2021

and

Crl.M.P.(MD)Nos.5301 and 5303 of 2021

1.Sivakumar

2.Murali

... Petitioners

Vs.

State rep. by
The Inspector of Police,
Railway Police Station,
Madurai.

(Crime No.144 of 2018)

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.400 of 2019 pending before the learned Judicial Magistrate No.VI, Madurai, in connection with Cr.No.144 of 2018 dated 21.06.2018 for the offences under Sections 153(B), 505(1)(b), 505(1)(C) of IPC and Section 137(i)(a) of Railway Act, 1989, on the file of the respondent and quash the same against the petitioners as illegal.

For Petitioners

: Mr.S.Vanchinathan

For Respondent

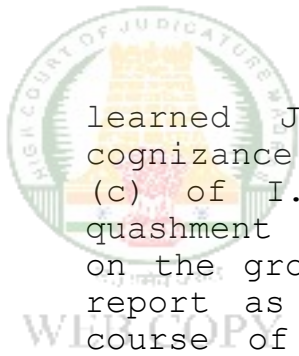
: Mr.K.Sanjai Gandhi,

Govt. Advocate (Crl. Side)

ORDER

This petition is filed seeking quashment of the proceedings in C.C.No.400 of 2019 pending on the file of the learned Judicial Magistrate No.VI, Madurai.

2.The case of the prosecution is that on 12.05.2018 at about 12.05 p.m., the petitioners entered into the platform No.1 at Madurai railway station and distributed pamphlets to the general public at the Guruvayur-Chennai express trail regarding Sterlite and campaigned against the Central and State Governments. By their activities, they have created enmity among the society and also incited violence against the State and Central Governments. They also indulged in creating nuisance. On the basis of the complaint given by the Sub-Inspector of Police, Railways, a case in Crime No.144 of 2018 for the offences under Sections 153(B), 505(1)(b), 505(1)(c) of I.P.C. and Section 137(i)(a) of Railway Act has been registered against the petitioners. After completing the formalities and investigation, final report has been laid before the

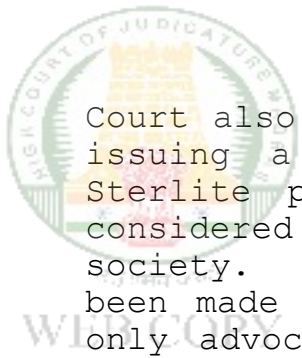


learned Judicial Magistrate No.VI, Madurai, which has taken cognizance for the offences under Sections 153(B), 505(1)(b), 505(1)(c) of I.P.C. and Section 137(i)(a) of Railway Act. Seeking quashment of the final report, this petition has been filed mainly on the ground that none of the allegations mentioned in the final report as well as the materials that have collected during the course of investigation attract any of the ingredients of the offences against the petitioners.

3.Heard both sides.

4.It is admitted by these petitioners that on 12.05.2018, they entered into Guruvayur-Chennai express train and distributed pamphlets to the passengers regarding Sterlite issue but they would state that only after purchasing platform ticket, they entered into the railway station and made the campaign. Such a campaign or a propaganda against the running of Sterlite plant in Thoothukudi is not an offence and such a right to protest and propaganda and campaign is well recognized under Article 19(1) of the Constitution of India. Moreover, even the grounds mentioned in the final report are not attracted to implicate the petitioners for the offences under Sections 153(B), 505(1)(b), 505(1)(c) of I.P.C. and Section 137(i)(a) of Railway Act. No doubt, the petitioners got the freedom of expression to protest and campaign but they cannot enter any place at any time and issue pamphlets and indulge in protest and campaign. The Guruvayur-Chennai express train was stationed in the railway station at that time, the petitioners entered into railway compartments and distributed pamphlets. According to them, they purchased platform ticket but the copy of the same was not produced. However, it is seen that they entered into railway compartment for the purpose of issuing pamphlets. Even though such an act on the part of the petitioners is not permissible, the question that arises for consideration, whether the offences are attracted. When a similar issue arose before this Court in Crl.O.P.(MD)No.10701 of 2017, this Court came to the conclusion that upon attracting the penal provision under Sections 153(B) and 505(1)(b) of I.P.C., it must be brought on record with sufficient materials to show that the act of campaign was aimed at to promote the enmity between the people in the society and incite violence. Similarly under Section 153(B) of I.P.C., the act campaign of might have been prejudiced to the national integration. But how the issuance of pamphlets making protest and campaign against the running of Sterlite power plant will result in disruption of national integration is not known.

5.In my considered view, the allegations made in the final report do not attract the ingredients of the offence under Section 153(B) of I.P.C. Moreover, the Hon'ble Supreme Court in the judgment reported in **AIR 2015 SC 1523 (Sherya Singhal vs. Union of India)** had observed that a speech can be held to be an offence, when it is capable of inciting imminent lawless act. The Hon'ble Supreme



Court also made a distinction between advocacy and incitement. Here issuing a pamphlet and making protest against the running of Sterlite power plant will at no stretch of imagination can be considered as an act, which incited immediate lawlessness in the society. It is only an advocacy. If at all a campaign that has been made by the petitioners issuing the pamphlets will amount to only advocacy and certainly not incitement, as defined under the aforesaid penal provision. Sections 505(1)(b) and 505(1)(c) of I.P.C., read as under:-

"505. Statements conducing to public mischief –

(1) Whoever makes, publishes or circulates any statement, rumour or report,–

(a)

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility;

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community;

shall be punished with imprisonment which may extend to three years, or with fine, or with both."

6.A reading of the definitions show that there must be clear intention on the part of the petitioners to create fear or alarm to the public and thereby inducing them to commit an offence against the State or public tranquility or any class or community of person to commit any offence against any other class or community. Here none of the ingredients are attracted. The infamous Sterlite issue has created trouble in the recent past and arguments have been advanced for and against the running of the plant and the Hon'ble Supreme Court ordered closure of the plant, considering the environmental issue that has been created. Now the matter has been closed forever. In the background of the latest developments, continuation of the criminal proceedings and prosecution against the petitioners will become unnecessary exercise and unnecessarily wasting the Court's time.

7.No doubt, Section 137(i)(a) of Railway Act is attracted against the petitioners because they entered into the compartments without proper permission. Even though, the petitioners stated that they have purchased platform ticket, as I mentioned earlier, there is no materials to prove the same. Since the major offences under Sections 153(B), 505(1)(b) and 505(1)(c) of I.P.C., are not attracted, the remaining offence under Section 137(i)(a) of Railway Act is punishable only at six months, or with fine which may extend to one thousand rupees, or with both. For such an offence, the limitation period under Section 468 of Cr.P.C., is only six months.



The date of occurrence is 21.06.2018 and the final report ought to have been filed 21.12.2018, but it was filed on 01.02.2019, which is beyond the period of limitation. So on that ground also, the final report is liable to be quashed.

8. For all these reasons, this Criminal Original Petition is liable to be allowed and it is accordingly allowed and the proceedings in C.C.No.400 of 2019 pending on the file of the learned Judicial Magistrate No.VI, Madurai stands quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS III)

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/ /2021

Sub Assistant Registrar(CS)

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 Judicial Magistrate No.VI,
Madurai.
- 2.The Inspector of Police,
Railway Police Station,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Cr1.O.P. (MD)No.10360 of 2021
16.09.2021

RS (24.09.2021) 4P 4C