



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.08.2021

Pronounced on : 16 .09.2021

CORAM:

THE HONOURABLE MR JUSTICE G.ILANGOVAN

Crl.O.P. (MD) No.9148 of 2021

and Crl.M.P(MD)Nos.4675 and 4673 of 2021

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Nagarajan ... Petitioner/Sole Accused

Vs.

1.The Inspector of Police,
Sivagiri Police Station,
Tenkasi District
(In Crime No.147 of 2018) ... 1st Respondent/Complainant

2. G.Packiyaraj ... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Peititon is filed under Section 482 of Cr.P.C to call for the records pertaining to the charge sheet in STC NO.17 of 2020 on the file of the District Munsif cum Judicial Magistrate, Sivagiri and quash the same as illegal.

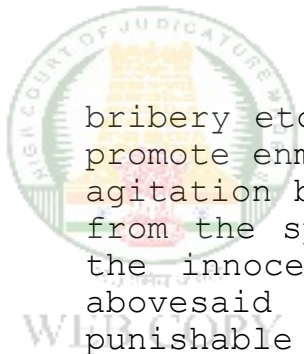
For Petitioner : Mr.K.Navaneetha Raja
For R1 : Mr.R.M.Anbunithi
Additional Public Prosecutor

O R D E R

This petition is filed seeking quashment of charge sheet in STC NO.17 of 2020 on the file of the District Munsif cum Judicial Magistrate, Sivagiri.

2. The case of the prosecution in brief is as follows:

On 23.04.2018, the accused namely Nagarajan without proper permission or licence pasted a poster near the building of Anganvadi demanding arrest of one Gnananmani, Edwin and Sekar, who indulged in creating enmity among the public. So on the basis of the complaint given by the Village Administrative Officer, the case in Crime No.147 of 2018 for the offence under Section 4 of Tamilnadu Open Places (Prevention of Disfigurement) Act, 1959 was registered. Investigation was undertaken and materials were collected and final report was filed before the Judicial Magistrate, Sivagiri on 30.11.2018 which was also taken on file in S.T.C. No.17 of 2020 on the file of the District Munsif cum Judicial Magistrate, Sivagiri. Seeking quashment of the proceedings, this petition is filed mainly on the ground that the offences mentioned in the final report did not attract any of the ingredients and the second respondent is not competent authority to lodge complaint. The petitioner is a social activist and continuously fighting against dowry harassment and



bribery etc. On 23.04.2018, one Gnanamani, Edwin and Sekar tried to promote enmity among two different community people. The people made agitation before the house of the abovesaid Gnanamani and he escaped from the spot. But however, the cases have been registered against the innocent people on the basis of the complaint given by the abovesaid Gnanamani in Crime No.143 of 2018 for the offences punishable under Sections 147, 148, 452, 294(b), 324 and 506(ii) IPC and some unknown people pasted the poster and expressed their grievance demanding arrest of the abovesaid people. So this does not constitute any offence. It is a non-cognizable offence upon which the police arrived to investigate without the permission of the Magistrate.

3. Heard both sides.

4. A short point is involved in this matter. The petitioner straight away relied upon the judgment in Pavayi Vs. the State in W.P(MD)No.20346 of 2019 dated 30.07.2019, wherein, a case was registered for the offences punishable under Section 4(A) of Tamilnadu Open Places (Prevention of Disfigurement) Act, 1959. The issue before the court was that whether the abovesaid offence is cognizable one. The court came to the conclusion that the offence punishable only upto 1 year or fine. So it falls under Entry-3 of the I Classification under Schedule-I of the Code of Criminal Procedure 1973. Therefore, it is non cognizable offence. Without permission under Section 155 of Cr.P.C, investigation undertaken by the police is not legal. On that ground, the proceedings was quashed.

5. Apart from this legal ground, the other factual issue has been raised by the learned counsel for the petitioner that he is no way involved in the pasting of poster. Another ground is that it is not objectionable advertisement or poster as defined under Section 2 (b) of the Tamilnadu Open Places (Prevention of Disfigurement) Act, 1959.

6.No doubt that the words used in the poster will not come under the definition of Section 2(b) of the Tamilnadu Open Places (Prevention of Disfigurement) Act, 1959, the term 'objectionable advertisement' has been defined as under:

(b) "Objectionable advertisement" means any advertisement which is like to:

(i) Incite any person to commit murder, sabotage or any offence involving violence; or (ii) seduce any member of any of the armed forces of the Union or of the police forces from his allegiance or his duty or prejudice the recruiting of persons to serve in any such force or prejudice the discipline of any such force or (iii) incite any section of the citizens of India; or which

(iv) is deliberately intended to outrage the feelings of any class of the citizens of India



by insulting or blaspheming or profaning the religion or the religious beliefs of that class; or (v) is grossly indecent or is scurrilous or obscene or intended for blackmail;

(vi) obstructs pedestrian traffic.

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7. But here, Section 4(AA) is only attracted:

Section 4(AA) A prohibition of pasting of posters and fixing of thatty boards etc., on motor vehicle:- (1) notwithstanding anything contained in Section 3, 3A, 4 or 4-A or any other provision of this Act, or any law for the time being in force, on person shall -

(a) affix to or inscribe or exhibit on, any motor vehicle, any poster or any effigy or any bill, notice, document, paper or other thing containing any words, signs or visible representations;

8. So, even though it is not an objectionable poster as defined under Section 2(b) of the abovesaid Act, pasting of the poster in a public place is mentioned in the abovesaid Section. The words used in the definition is ''any words'' which implies that it need not be an objectionable statement or slogan or whatever may be. However, any poster is pasted in a public place, with out permission it will amount to an offence under Section 4(AA) (a) of the Act Here, it is even admitted by the petitioner to the effect that it was pasted by some unknown person. But however, during the course of investigation, it was identified that only the petitioner pasted the poster in that area. Whether ti is true or not cannot be a matter for discussion in this petition. It has to be decided only during the course of trial. Since it is factual issue, it got to be tried as to its reliability.

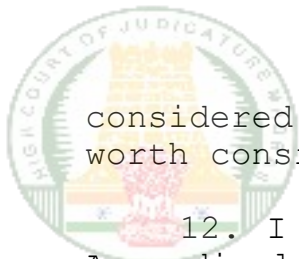
9. Now coming back to the nature of the offence, it is contended by the learned counsel for the petitioner that it is non cognizable offence which requires proper permission under Section 155 of Cr.P.C from the concerned jurisdictional Magistrate. Section 8 of the Act says that the offence under this Act to be cognizable in nature.

10. Section 8 is extracted hereunder:

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 the Code.

This provision has not been amended subsequently through subsequent amendment. So the offence under the Act continued to be cognizable in nature.

11. But unfortunately, Section 8 of the Act was not brought to the notice of this Court when Crl.O.P(MD 20346 of 2019 was decided on 30.07.2019 as noted above. So the petitioner cannot rely upon the above said judgment for the purpose of the argument that it is non cognizable offence and therefore, the police has not permitted to



considered opinion that the grounds made by the petitioner are not worth considering. The petitioner has to undergo the trial process.

12. I find no merit in the petition and it deserves dismissal. Accordingly, the same is dismissed. Consequently, connected miscellaneous petitions are closed. However, there shall be a direction to the trial court to complete the trial process within a period of 3 months from the date of receipt of a copy of this order. Compliance report shall be sent to the Registry since it is a simple offence.

Sd/-

Assistant Registrar (W)

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/ /2021

Sub Assistant Registrar(CS)

CM

To,

1.The District Munsif cum Judicial Magistrate,
Sivagiri.

2.The Inspector of Police,
Sivagiri Police Station,
Tenkasi District

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

Copy to :-

The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

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and Crl.M.P(MD)Nos.4675 and 4673 of 2021
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