



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	25.08.2021
Date of Order	26.10.2021

WEB COPY

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVANCrl.O.P.(MD)No.12165 of 2021andCrl.MP(MD)Nos.6247 and 6248 of 2021

Surenthar @ Surentharan : Petitioner/Sole Accused

Vs.

State rep. by
The Inspector of Police,
Thanthonimalai Police Station,
Karur.

(Crime No.23 of 2019) : Respondent/Complainant

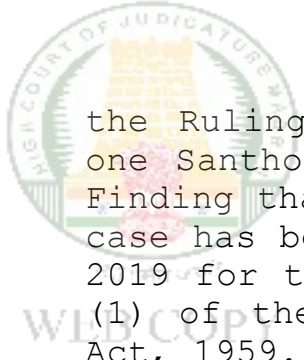
Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to call for the records in STC No.2057 of 2019 pending before the learned Judicial Magistrate No.1, Karur, in connection with Crime No.23 of 2019 dated 22.01.2019 for the offence under sections 153(A), 504 of IPC and Section 4(1) of the Tamil Nadu Open Places (Prevention of disfigurement) Act, 1959 on the file of the 1st respondent and quash the same against the petitioner as illegal.

For Petitioner : Mr.S.Vanchinathan
For Respondent : Mr.K.Sanjay Gandhi
Government Advocate
(Criminal side)

O R D E R

This petition is filed by the petitioner seeking quashment of the case in STC No.2057 of 2019 pending on the file of the Judicial Magistrate No.1, Karur, as against this petitioner.

2.The case of the prosecution is that on 22.1.2019 at about 2.00 pm, the 2nd respondent/de-facto complainant, while he was working as Sub Inspector of Police along with his team members, were on regular patrol duty near Government Arts College, Thanthoimalai, Karur, at that time, he noticed a poster pasted in the wall demanding closure of Sterlite Industries and criticised



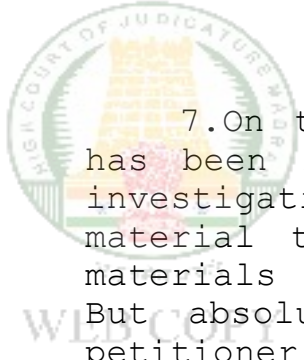
the Ruling Party and condemning foisting of false cases against one Santhosh, who is the Head of Federation of all the Colleges. Finding that, such a poster has been pasted in the public place, a case has been registered against unknown persons in Crime No.23 of 2019 for the offence under Sections 153(A), 504 IPC and Section 4 (1) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959. After registration of the above said FIR, investigation was undertaken and during the course of investigation, it was found that only this petitioner pasted the above said poster in the public place. So on that ground, final report has been filed against this petitioner, charging him for the above said offences and cognizance has also been taken by the Court namely the Judicial Magistrate No.1, Karur.

3. Seeking quashment of the above said case, this petition came to be filed by the petitioner mainly on the ground that none of the ingredients, either as mentioned in the alleged poster or in the FIR or in the final report, attract any of the ingredients of the offences under sections 153(A), 504 of IPC and Section 4(1) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959.

4. Heard both sides.

5. It is not in dispute that the poster was found pasted in a public place, that is in the compound wall of the Government Arts College, Thanthonimalai, Karur. The poster condemned the activities of the police, demanding closure of the Sterlite Industries. So, it is seen that the poster has been pasted in the public place. So the offence under section 4(1) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959 will squarely attract.

6. It is not a case of the petitioner that permission has been obtained from the concerned authorities for pasting the poster. So, pasting of poster in the public place without proper permission will amounts to prosecuting the offence, which is punishable under the said penal provisions of the Act. *Per se*, the question is that who pasted the above said poster. There is no eye witness. No statement of witnesses have been recorded. The identity of the person, who pasted the poster has also not been found out. Except the police officials, no other persons have been examined. The Head Constable namely Prakash attached to the above police station has stated that on investigation, it came to the notice that this petitioner pasted the poster. But however, who gave the information is not clear on record. No material has been collected to show the identity of the persons. So without collecting proper materials, it appears that this petitioner has been implicated in this case. This is the first defect, which is available against the prosecution case.



7. On the mere surmise or oral enquiry, the information that has been furnished by the unknown person during the course of investigation, cannot be taken as a sufficient or prima facie material to proceed against the accused persons. Prima facie materials must be available to proceed against this petitioner. But absolutely, I find no prima facie material against this petitioner.

8. The next is the ingredients of the offence under section 153-A IPC, which reads as follows:-

"153-A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.-(1). Whoever-

(a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities; or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, (or)

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants, in such activity will use or be trained to use criminal force or violence or participants in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity, for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with



imprisonment which may extend to three years, or with fine, or with both;

(2) Offence committed in place of worship, etc:- *Whoever commits an offence specified in sub-section (1) in any place or worship or in any assembly engaged in the performance of religious worship or religious ceremonies shall be punished with imprisonment which may extend to five years and shall also be liable to fine."*

9. Reading of the above provision and comparing the same with that of the words, that are found in the poster shows that the ingredients are not attracted. It is a common knowledge and it has also been taken judicial notice that Sterlite Copper Plant issue attracted for and against comments and action through out India. More particularly in Tuticorin District, Tamil Nadu, several protests, agitations and demonstrations took place. It appears that apart from the protest, poster came to be pasted in the compound wall of the Government Arts College, Thandonimalai. So, reading of the words used in the poster per se will not attract the offence 153(A) IPC.

10. Similarly, Section 504 IPC is defined as under:-

"504. Intentional insult with intent to provoke breach of the peace:-Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment or either description for a term which may extend to two years or with fine, or with both."

11. So reading of the above provision also shows that the word, that has been used in the poster does not per se insult or provoke any person to breach the public peace, or to commit any other offence. This ingredient is also not attracted levelled against this petitioner. So, I am of the considered view that no material has been collected by the Investigating Agency for charging the petitioner under section 4(2) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959. In so far as the other offences are concerned, the ingredients are not attracted against the petitioner and the words mentioned in the poster. So, I am of the considered view that the final report, that has been presented taking cognizance against the petitioner is liable to be quashed.

<https://hcservices.ecourts.gov.in/hcservices/>

12. Accordingly, this Criminal Original Petition stands **allowed**. The charge sheet in STC No.2057 of 2019 pending on the



file of the Judicial Magistrate No.1, Karur is hereby quashed as against this petitioner. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (Cr1)

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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 Judicial Magistrate No.1,
Karur.
- 2.The Inspector of Police,
Thanthonimalai Police Station,
Karur.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

**Cr1.OP(MD)No.12165 of 2021
26.10.2021**

RK(29/11/2021) 5P 4C