



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 22.09.2021

CORAM:

THE HONOURABLE MR JUSTICE G.ILANGOVAN

Crl.O.P. (MD) No.12654 of 2021

and

Crl.M.P(MD)Nos.6465 and 6467 of 2021

WEB COPY

1.Vigneshwaran

2.Raju

... Petitioners/Accused 1 & 2

Vs.

The Inspector of Police,

Karur Police Station,

Karur District.

(In Crime No.1225 of 2016)

... Respondent/Complainant

PRAYER: Criminal Original Peititon is filed under Section 482 of Cr.P.C, to call for the records in C.C.No.88 of 2017 pending before the learned Judicial Magistrate No.I, Karur in connection with Crime No.1225 of 2016 dated 26.12.2016 for the offences under Sections 153 (A) of of IPC r/w Section 4(1) of Tamil Nadu Open Places (Prevention of disfigurement) Act 1959 on the file of the respondent police and quash the same against the petitioners as illegal.

For Petitioners

: Mr.S.Vanchinathan

For Respondent

: Mr.K.Sanjai Gandhi

Government Advocate

O R D E R

This petition is filed seeking to call for the records in C.C.No.88 of 2017 pending before the learned Judicial Magistrate No.I, Karur in connection with Crime No.1225 of 2016 dated 26.12.2016 for the offences under Sections 153(A) of of IPC r/w Section 4(1) of Tamil Nadu Open Places (Prevention of disfigurement) act 1959 on the file of the respondent police and quash the same against the petitioners as illegal.

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

On 26.12.2016, the accused persons without proper permission or licence pasted a poster near the Karur Bus stand. The contents of the pasted posters are related to the Income Raid. On the basis of the complaint given by the Village Administrative Officer, the case in Crime No.1255 of 2016 for the offence under Sections 153(A) of IPC r/w Section 4(1) of Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959 was registered against the petitioners. Investigation was undertaken and materials were collected and final report was filed before the Judicial Magistrate No.I, Karur, which was also taken on file in C.C. No.88 of 2017 on the file of the learned Judicial Magistrate-I, Karur. 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 respondent is not the competent authority to lodge complaint.

3. Heard both sides.

4. Here, only a short point is involved in this matter. This petition is filed mainly on the ground that Section 153(A) of IPC and Section 4(1) of Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959 are not attracted against the petitioners as mentioned in the First Information Report as well as the final report.

5. The wordings in the poster does not indicate any of the ingredients of Section 153A of IPC. Hence, the offence under Section 153 A of IPC is not attracted. Section 153 (A) of IPC is extracted here under:-

"153A. 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 participates 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



three years, or with fine, or with both.

Offence committed in place of worship, **etc.**—(2) Whoever commits an offence specified in sub-section (1) in any place of 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."

The reading of the provision will indicate that the act ought to have been committed by the petitioners with the intention to create enmity between different groups of people on the ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintain of harmony. Here, reading of the poster shows that allegation have been levelled against the political functionaries with regard to raid that have been conducted upon the other political functionaries. The petitioners have relied upon the judgment in **Venkatesh Vs. The Inspector of Police, Villupuram District** in **Crl.O.P.No.23182 of 2010**, wherein, a case was registered for the offences punishable under Section 3(1) of Tamilnadu Open Places (Prevention of Disfigurement) Act, 1959. The issue before the court was that pasting of poster in the open place, it was found that there was no objectionable words or material in the poster. According to this Court, Which clearly covered the Article 19(a) of the Constitution of India and as such the words found in the poster is not objectionable one. But mere reading of the words used in the poster shows that they have not used any objectionable words. 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 religious 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;''

7. I have already mentioned earlier that the petitioners made allegation against one political functionaries with regard to the Income Raid. The Tamilnadu Open Places (Prevention of Disfigurement) Act, 1959 has undergone several amendment. Sections 2 (a) and 4-A(1) (a) of the above Act are extracted here under:-

"Definitions:-

2.....In this Act, unless the context otherwise requires:-

[a] "Advertisement" includes any effigy or any bill, notice, document, paper of other thing containing any words, signs, or visible representation.

Section 4-A(1) (a) 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, no person shall, in any local area,-

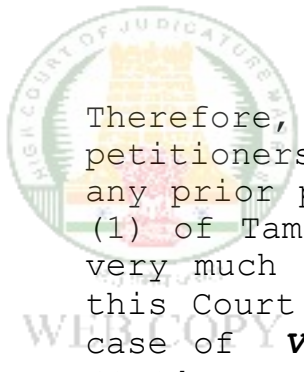
(a) affix to or inscribe or exhibit on, any motor vehicle, any poster or any effigy or any bill, notice, document, paper or other thing containing any words, signs or visible representations;"

8.It appears that the poster has been pasted in the public place namely Karur Bus stand. So Section 4 is clearly attracted and also cognizable in nature.

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.

10.The order of this Court in **Crl.O.P (MD).No.23182 of 2010** dated **03.03.2011** in the case of **Venkatesh Vs. The Inspector of Police, Vikravandi Police Station, Villupuram District**, wherein it is stated that the petitioner was affixing posters on a wall in public view containing slogans with provocative words against the Government so that Section 3 of the Tamil Nadu Open Places Prevention of Disfigurement Act, 1959 was invoked against the petitioner and that Criminal Original Petition was allowed stating that in a democratic society all the citizens have freedom of speech and expressing their fundamental right. Therefore, whatever stated in the alleged poster is not coming under the definition of 1 to 6 of 2(b) of the Act.

11.As I mentioned earlier, the sentence used in the poster will not come under the category of objectionable advertisement.
<https://hcservices.ecourts.gov.in/hcservices/>



Therefore, Section 153(A) of IPC will not attract against the petitioners and the poster was pasted in the public place without any prior permission from the concerned officials so that Section 4 (1) of Tamil Nadu Open Places (Prevention of disfigurement) Act is very much attract against the petitioners. Therefore, the order of this Court in **Crl.O.P(MD).No.23182 of 2010** dated **03.03.2011** in the case of **Venkatesh Vs. The Inspector of Police, Vikravandi Police Station, Villupuram District** will not help the case of the petitioner.

12. I am of the considered opinion that the grounds raised by the petitioners are not worth for considering this petition and no valid ground is made out to quash the charge sheet. The petitioners have to undergo the trial process.

13. 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 the matter in the issue is of the year 2017 and the crime number is of the year 2016.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

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To,

1. The Judicial Magistrate No.I, Karur

2.The Inspector of Police,
Karur Police Station,Karur 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.

Crl.O.P.(MD) No.12654 of 2021and
Crl.M.P(MD)Nos.6465 and 6467 of 2021
22.09.2021

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