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CRL.O.P.(MD)NO.12788 OF 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.11.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.12788 of 2021 and

CRL.M.P.(MD)No.6585 of 2021

A.Venkatesh

... Petitioner/Sole Accused

Vs.

1. The Inspector of Police,
Tenkasi Police station,
Tenkasi District.
(Crime No.401 of 2016)

...1st Respondent/Complainant

2. The Sub Inspector of Police,
Tenkasi Police station,
Tenkasi District.

... 2nd Respondent /
Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records pursuant to C.C.No.42 of 2021 on the file of the Judicial Magistrate Court, Tenkasi and quash the same.

For Petitioner : Mr.M.Karthikeya Venkitachalapati
For Respondents : Mr.T.Senthil Kumar,
Additional Public Prosecutor.

O R D E R

Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondents.

2. The petitioner is figuring as the sole accused in C.C.No.42 of 2021 on the file of the Judicial Magistrate, Tenkasi. The petitioner is facing trial for the offences under Sections 294(b), 353, 506(2) and 505(1)(b) of I.P.C. and Sections 66D and 66E of the Information Technology Act 2000.

3. The case of the prosecution is that on 14.10.2016, the petitioner had circulated a whatsapp message stating that he intended to go on a fast on 15.10.2016 at Chennai in order to ascertain the true facts relating to the health of the Late Chief Minister Ms.J.Jayalalithaa. The petitioner had also sought support of the general public in this regard. The respondent police had



gone to enquire the petitioner at around 11.50 a.m., on 14.10.2016. The petitioner is said to have abused them and also prevented them from discharging their public duty. The conduct of the petitioner led to registration of Crime No.401 of 2016 for the offences under Sections 294(b), 353, 506(2), 505(1)(b) of I.P.C. and Sections 66D and 66E of the Information Technology Act 2000. The matter was taken up for investigation and final report was also filed. The Court below took cognizance of the offences under Sections 294(b) and 353 of I.P.C. alone and issued summons to the petitioner. For quashing the said proceedings, this criminal original petition came to be filed.

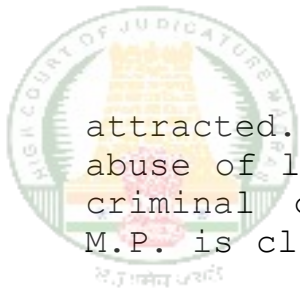
4. The learned counsel appearing for the petitioner reiterated all the contentions set out in the memorandum of grounds. He called upon this Court to quash the proceedings as they amount to abuse of legal process.

5. Per contra, the learned Additional Public Prosecutor appearing for the respondents submitted that the petitioner has not made out a case for quashing the impugned proceedings. He called for dismissal of this criminal original petition.

6. I carefully considered the rival contentions and went through the materials on record.

7. The case of the respondents is that the petitioner had attempted to prevent the respondents from discharging their public duties. The respondents have not spelt out as to how they were prevented. The petitioner had announced his intention to go on a fast at Chennai. He had only circulated a whatsapp message in this regard. If the petitioner had committed any offence, the respondents would have certainly registered a case against the petitioner. No such First Information Report was registered against the petitioner. When no First Information Report had been registered against the petitioner, the question of serving summons under Section 91 of Cr.P.C. does not arise. Therefore, the very act of attempting to serve summons under Section 91 of Cr.P.C. on the petitioner is without jurisdiction. The petitioner cannot be faulted for taking a defiant stand. Protesting and questioning the legality of police action will not by itself amount to preventing the police from carrying out their public duties. Thus, the elementary ingredients of the offence under Section 353 of I.P.C. are absent.

8. Section 294(b) of I.P.C. will be attracted only if the petitioner had employed obscene expressions in a public place. A reading of the final report as well the statement recorded under Section 161 of Cr.P.C. does not indicate that obscene words were employed. Therefore, Section 294(b) of I.P.C. is also not



attracted. Continuance of the impugned prosecution would be an abuse of legal process. The impugned proceedings are quashed. This criminal original petition is allowed. Consequently, connected M.P. is closed.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PMU

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,
Tenkasi.
2. The Inspector of Police,
Tenkasi police station,
Tenkasi District.
3. The Sub Inspector of Police,
Tenkasi police station,
Tenkasi District.
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.M. KARTHIKEYAVENKITACHALAPATHY, Advocate (SR-34837 [F] dated 17/11/2021)

Crl.O.P.(MD)No.12788 of 2021

15.11.2021

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