



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.12.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)No.16334 of 2021

and

Crl.M.P. (MD)No.8768 of 2021

WEB COPY

Balaprajapathy Adikalar

... Petitioner / Sole Accused

Vs.

1.The Inspector of Police,
Mandaikadu Police Station,
Kanniyakumari District,
Kanniyakumari.
(Crime No.57 of 2021)

... Respondent No.1/Complainant

2.Sivakumar

... Respondent No.2 / Defacto
Complainant

Prayer : Criminal Original Petition is filed under Section 482 Cr.P.C., to call for records pertaining to the First Information Report in Crime No.57 of 2021 dated 12.06.2021 on the file of the first respondent and quash the same.

For Petitioner : Mrs.T.Seeni Syed Amma

For Respondents : Mr.E.Antony Sahaya Prabahar

Additional Public Prosecutor for R.1
Mr.K.Rajeshwaran for R.2

ORDER

The petitioner wants this Court to quash the FIR in Crime No.57 of 2021 registered on the file of Mandaikadu Police Station, for the offence under Section 295 (A) IPC. Notice was issued to the defacto complainant/Sivakumar. He entered appearance through counsel.

2. Today, when the matter was taken up for hearing, Mr.K.Rajeshwaran, learned counsel appearing for the second respondent reported no instructions and called upon this Court to issue fresh notice to the defacto complainant. When once the defacto complainant has been put on notice and he also entered appearance through the counsel, the question of issuing fresh notice does not arise.

3. The learned counsel appearing for the petitioner reiterated
<https://hcservices.ecourts.gov.in/hcservices> instructions set out in the memorandum of grounds and



called upon this Court to quash the impugned FIR.

4. Per contra, the learned counsel appearing for the first respondent submitted that no case for quashing has been made out.

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

6. The petitioner is a religious leader based in Swamythoppu in Kanyakumari District. Arulmighu Bagavathi Amman Temple in Mandaikadu is well known temple and recently, witnessed a fire accident. The question arose as to how the restoration measures have to be taken. In this regard, the petitioner herein opined that there is no need to go for what is known as Deva Prasanam and that steps must be taken by the Tamil Nadu Government to bring the temple under Tamil traditions. The opinion expressed by the petitioner was published in news papers also. The defacto complainant found this to be highly objectionable and caused registration of the impugned FIR. According to the defacto complainant, the petitioner had stated that the temple is cemetery of a mentally retarded girl who belongs to a particular community. Absolutely, no material was placed by the defacto complainant in support of his allegation. In any event, the petitioner who is also a Hindu Religious Head, is definitely entitled to express his opinion that the temple in question must be brought under Tamil traditions.

7. Section 295 (A) IPC will be attracted only if there is a deliberate and malicious intent to outrage the religious beliefs of a particular class. The petitioner is entitled to express his opinion and the same is duly protected by Article 19 (1) (a) of the Constitution of India. The learned counsel appearing for the petitioner has rightly relied on the decisions reported in **Kushboo vs Kaniammal(2010) 5 SCC 600** and the judgment of the Hon'ble Division Bench of this Court reported in **S.Tamilselvan vs The Government of Tamil Nadu (2016(4) CTC 561)**. The ratio laid down in the aforesaid decisions squarely applies to the case on hand.

8. Registration of the impugned FIR was unwarranted and it stands quashed. This Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

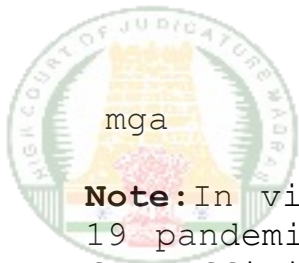
Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2022

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 Inspector of Police,
Mandaikadu Police Station,
Kanniyakumari District,
Kanniyakumari.

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

+1 CC to M/s.S.RAJASEKAR, Advocate (SR-39683[F] dated 21/12/2021)

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and
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