



Crl.O.P(MD)No.19486 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)No.19486 of 2021

and

Crl.M.P.(MD)Nos.10878 and 10880 of 2021

1.Thangamuthu

2.Thangamuthu

3.Thangaganapathi

4.Thangamuthu

5.Arumugam

... Petitioners

Vs.

1.The State Rep. by
The Inspector of Police,
Sevalapeeri Police Station,
Tirunelveli District.

2.K.Sudhan

... Respondents

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating to the proceedings in C.C.No.10 of 2020 on the file of the learned Judicial Magistrate No.III, Tirunelveli and quash the same.



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Crl.O.P(MD)No.19486 of 2021

For Petitioners : Mr.Aayiram K.Selvakumar
For Respondents : Mr.T.Senthil Kumar,
Addl. Public Prosecutor for R1.

ORDER

Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor for the first respondent.

2.The petitioners are figuring as accused in C.C.No.10 of 2020 on the file of Judicial Magistrate No.III, Tirunelveli. The second respondent herein lodged information that on 10.06.2019 at midnight, the petitioners herein while celebrating their birthday party had cut the cake with sickle and also circulated the images in social media. That led to registration of case in Crime No.107 of 2019. Investigation was conducted and final report for the offences under Section 67 of Information Technology Act, 2000 and Sections 147 and 291 of IPC. Cognizance of the offences was taken. The case is presently pending trial in C.C.No.10 of 2020. To quash the same, this criminal original petition has been filed.

3.The learned counsel for the petitioners reiterated all the contentions set out in the memorandum of grounds and called for quashing the impugned proceedings.



Crl.O.P(MD)No.19486 of 2021

WEB COPY

4.Per contra, the learned Additional Public Prosecutor submitted that a case for quashing has not been made out.

5.I carefully considered the rival contentions and went through the materials on record. The petitioners have assembled in front of the local Mariamman temple for celebrating the birthday of the first petitioner herein. It was a hamlet. Such an assembly by no stretch of imagination can be called as an unlawfully assembly. The object was to celebrate the birthday of the first petitioner. It cannot be called as an unlawful object also. Therefore, the offence under Section 147 of IPC is not at all made out.

6.The offence under Section 291 of IPC is also not made out, in view of the order dated 09.11.2021 made in Crl.O.P.(MD)No.16135 of 2021. In the said decision, I had held that only for breach of the order under Section 143 of CrPC, Section 291 of IPC can be invoked. Mere causing of public nuisance can amount to an offence under Section 290 of IPC alone. It is a non-cognizable offence. Hence, without getting permission from the jurisdictional Magistrate, no FIR can be registered.



Crl.O.P(MD)No.19486 of 2021

To overcome the said statutory bar, police resort to Section 291 of IPC. I have held in the said decision that what cannot be done directly, cannot be done indirectly.

7. Section 67 of Information Technology Act can be invoked only if what has been published or transmitted in the electronic form is lascivious or appeals to the prurient interest or if its effect is such as to tend to deprave or corrupt persons who are likely to come across the same. The images circulated by the petitioners herein cannot fall under such a category. Therefore, Section 67 of Information Technology Act also cannot be involved.

8. At the same time, I cannot approve the conduct of the petitioners herein. The birthday party can be celebrated in a far better fashion. Cutting birthday with sickle is not in good taste. The petitioners herein are youngsters and nor gangsters and they have realized their folly. They give an undertaking before this Court that in future, they will not conduct themselves in such a manner. There is no reason as to why I should disbelieve the petitioners herein.



Crl.O.P(MD)No.19486 of 2021

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9. Recording the petitioners' undertaking, the impugned proceedings are quashed and the criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

09.12.2021

Index : Yes/No

Internet : Yes/No

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Issue order copy on 20.09.2022.

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.III,
Tirunelveli.
2. The Inspector of Police,
Sevalapeeri Police Station,
Tirunelveli District.



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Crl.O.P(MD)No.19486 of 2021

G.R.SWAMINATHAN, J.

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Crl.O.P(MD)No.19486 of 2021

09.12.2021