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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.6334 of 2022

and

Crl.M.P.No.3549 of 2022

Kathiroli,

S/o.Tamil Maran

... Petitioner/Accused No.1

Vs

1.The State represented by,

The Sub Inspector of Police,
Race Course Police Station,
Coimbatore - Post & District,
Coimbatore.

...Respondent/Complainant

(Crime No.262 of 2019)

2.M.Ramesh,

The Sub-Inspector of Police,
Race Course Police Station,
Coimbatore - Post & District,
Coimbatore.

... Respondents/Defacto Complainant

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the charge sheet in S.T.C.No.4843 of 2019 on the file of the Judicial Magistrate No.III, Coimbatore and to quash the same.

For Petitioner : Mr.D.Veerasekharan

For Respondents :

For R1 : Mr.A.Gokulakrishnan
Additional Public Prosecutor

For R2 : No appearance



ORDER

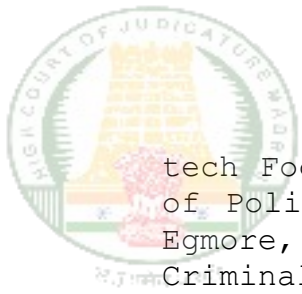
This Criminal Original Petition has been filed, to call for the records relating to the charge sheet in S.T.C.No.4843 of 2019 on the file of the Judicial Magistrate No.III, Coimbatore and to quash the same.

2. The brief facts of the case is that on 08.04.2019 at about 09.45 hours, the second respondent conducted a prohibition raid nearby Government Arts College, Coimbatore and he found that the petitioner and two others belongs to Revolutionary Youth Front circulated notice and booklet relating to the Election of Parliament without permission, while the Election was in progress. Hence, a suo motu case was registered against the petitioner in Crime No.262 of 2019 for the offence under Section 4A(1a) read with Section 4B of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959. After investigation, a final report has also been filed by the second respondent and the same has been taken on file before the Court below for an offence under Section 4A(1a) read with Section 4B of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959.

3. The learned counsel for the petitioner would submit that the investigation and the final report had been taken cognizance by the Court below is unsustainable in view of the fact that the offence in question is punishable with one year or fine and it falls under Entry-3 of the II Classification under Schedule-I of the Code of Criminal Procedure, 1973. Therefore, it is a non-cognizable and bailable offence for which the respondents ought to have obtained an order under Section 155 of Cr.P.C., before proceeding further with the investigation. Since the procedure has not been followed, the entire investigation is illegal and consequently, the proceedings will have to be quashed.

4. Heard both sides and perused the materials available on record.

5. The facts of the present case is squarely covered by the Judgment of the Hon'ble Supreme Court in Rajeev Chaudhary Vs State (N.C.T) of Delhi reported in 2001 (2) L.W Criminal Page 866, wherein, the Hon'ble Supreme Court has held that in a case of this nature, the orders of Magistrate is mandatory under Section 155 of Cr.P.C., before the investigation can take place. This Judgment has been followed by this Court in M/s.Sivaji Hi-



tech Foods Private Limited Vs State Represented by the Inspector of Police, IPR Enforcement Cell Unit-II, V.P.C-CID, Chennai-II, Egmore, Chennai - 600 008 and another reported in 2019 (2) L.W Criminal, Page 70.

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6.In view of the above, the proceedings in S.T.C.No.4843 of 2019 on the file of the Judicial Magistrate No.III, Coimbatore is hereby quashed and this Criminal Original Petition is allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

SD/-
ASSISTANT REGISTRAR

// TRUE COPY //

SUB ASSISTANT REGISTRAR

rgm/arb
To

1.The Judicial Magistrate No.III,
Coimbatore.

2.The Sub Inspector of Police,
Race Course Police Station,
Coimbatore - Post & District,
Coimbatore.

3.M.Ramesh,
The Sub-Inspector of Police,
Race Course Police Station,
Coimbatore - Post & District,
Coimbatore.

4.The Public Prosecutor,
High Court of Madras.

+1cc to M/s.D.Veerasekaran, Advocate Sr.18727

Cr1.O.P.No.6334 of 2022
and Cr1.M.P.No.3549 of 2022

skm[co]
srg 05/04/2022