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Crl.O.P.Nos.6367, 6442 & 6356 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.09.2022

CORAM:

THE HON'BLE Ms.JUSTICE **R.N.MANJULA**

Crl.O.P.Nos.6367, 6442 & 6356 of 2021 and
Crl.M.P.Nos.4257, 4267 & 4236 of 2021

A.Zakir Hussian

... Petitioner in all Crl.O.Ps

Vs.

1.State by:

The Inspector of Police,
B-12, Ukkadam Police Station,
Coimbatore.
(Crime No.475 of 2019)

2.P.Gopalakrishnan

... Respondents in Crl.O.P.No.6367 of 2021

1.State by:

The Inspector of Police,
B-2, R.S.Puram Police Station,
Coimbatore.
(Crime No.1093 of 2019)

2.A.J.Senthil Arasan

... Respondents in Crl.O.P.No.6356 of 2021

1.State by:

The Inspector of Police,
B-12, Ukkadam Police Station,
Coimbatore.
(Crime No.728 of 2019)

2.T.R.Ravi

... Respondents in Crl.O.P.No.6442 of 2021



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PRAYER in all Crl.O.Ps : Criminal Original Petitions are filed under Section 482 of Cr.P.C., to call for the records in Crime Nos.475, 1093 & 728 of 2019 on the file of the 1st respondent police and quash the same.

In all Crl.O.Ps

For Petitioner : Mr.R.Vivekananthan

For Respondents : Mr.A.Damodaran, APP

COMMON ORDER

These Criminal Original Petitions have been preferred to call for the records in Crime Nos.475, 1093 & 728 of 2019 on the file of the 1st respondent police and quash the same.

2. Heard Mr.R.Vivekananthan, learned counsel for the petitioner and Mr.A.Damodaran, learned Additional Public Prosecutor appearing for the first respondent.

3. The case of the prosecution is that the petitioner was spreading rumours through Social Media about the Government schemes and created fear among the minds of the public. By such circulation of false rumours in the form of audio recording through Whatsapp, the accused instigated the



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public against the Government and bothered the public peace. On the above said allegation, a case has been registered against the petitioner under Sections 505(1)(b), 504, 505(2) of I.P.C.

4. The learned counsel for the petitioner submitted that the case has been registered against the petitioner under Sections 505(1)(b), 504, 505(2) of I.P.C.; the petitioner had just forwarded the voice message only through his Whatsapp account; therefore, the above sections do not attract the offence committed by the petitioner; he would draw the attention of this Court to the orders passed by this Court in Crl.O.P (MD) No.106 of 2022 and Crl.M.P.(MD) No.78 of 2022 dated 21.01.2022, Crl.O.P.No.22811 of 2019 and Crl.M.P.No.11921 of 2019, dated 26.08.2019.

(i) ***Crl.O.P (MD) No.106 of 2022 and Crl.M.P.(MD) No.78 of 2022 dated 21.01.2022***, the relevant paragraphs are extracted hereunder:

“6.Section 504 of IPC is as follows:~

“504.Intentional insult with intent to provoke breach of the peace Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such



provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

This provision came up for consideration in quite a few decisions of the Madras High Court. In Muniswami Naicker Vs. P.Kanniappa Naicker (1949) 2 MLJ 767, it was held that the gravamen of the offence under Section 504 of IPC lies in the utterer provoking the victim by his words to commit an immediate breach of the peace. That can only occur if he utters the words in the presence of the victim or has them conveyed to him by letter or messenger. When the accused uttered the abuse in the absence of the complainant, he cannot be convicted under Section 504 of IPC unless he asked his hearers to convey it to the complainant. In Vasireddi Sivalinga Prasad Vs. Emperor (1941) MWN (Crl.) 31, where the accused abused the Zamindarini and her agents in the course of his speech on the inam legislation but neither the zamindarini nor her agents were present at the meeting, the accused cannot be convicted under Section 504 of IPC. In S.Gopal Vs. State (1952 MWN (Crl.) 60), it was held that the only two points necessary or that the person insulted must be present and such insult must give provocation to the person so insulted then or soon after to commit a breach of peace. Thus,



as per the aforesaid decisions, in order to attract the offence of Section 504 IPC, the accused must intentionally communicate an abuse or insult directly to the victim. In this case, the petitioner had posted the offending text in his Face Book page. The contents of one's Face Book page are primarily meant for one's "Face Book friends", though any one can access the same. Even the defacto complainant must have seen it only by chance or some body must have drawn his attention to it. Though the post was made on 08.12.2021, the complaint was lodged on 15.12.2021. Section 504 of IPC is intended to cover only one to one interactions and not a case of this nature.

7.Section 505(2) of IPC is as follows:~

“(2) Statements creating or promoting enmity, hatred or ill~will between classes Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill~will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.”



The petitioner's post does not involve two groups at all. There is no reference to religion, race, place of birth, residence, language, caste or community. It has been held that unless one group is sought to be pitted against the other on the aforementioned grounds, the penal provision is not attracted."

(ii) Crl.O.P.No.22811 of 2019 and Crl.M.P.No.11921 of 2019 dated

26.08.2019, the relevant paragraph is extracted hereunder:

"9.Even though the offence has been altered, this Court is of the considered view that no offence has been made out to attract the provisions of Section 505(1)(b) of IPC. In order to attract the provisions of the said offence, the act of the accused persons must lead to causing alarm to the public or any Section of the public and induce them to commit an offence against the State or against public tranquillity. Even if the case of the prosecution is taken as it is, the offence under Section 505(1)(b) is not attracted in this case. Merely because the accused persons were opposing the project that was planned to be implemented by the Government, that by itself cannot amount to an offence of public mischief."

5. Though it is stated in the complaint that the accused was involved in spreading rumours about certain Government schemes, no details have been



given as to what sort of rumour was spread by the petitioner and how it creates fear and disturbance in the minds of the public. Though the FIR need not be elaborated on this aspect, there should be some fundamental material facts other than the bald averments. The accused has been charged for the offence under Sections 505(1)(b), 504, 505(2) of I.P.C. In order to charge the person for the offence under Section 505(1)(b), the public mischief committed by the person should be proved. There is a difference between criticising the Government schemes and causing defame to any one's name personally with an intention to provoke breach of peace. In the instant case, not even a single material is produced to show that the accused was insulting any one intentionally and thereby provoking public peace and attracting Section 504. In so far as the offence under Section 505(2) is concerned, the complaint should have the ingredients to show that the accused was doing some acts intentionally to cause fear or hatred in the mind of the public or to induce anyone to commit an offence. No such ingredients are seen to be present on the face of the complaint.

6. It might be possible that the people may have any contrary view about the public scheme and would make comments against the same and that



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8. In the result, these Criminal Original Petitions are allowed and the FIR in Crime Nos.475, 1093 & 728 of 2019, on the file of the respondent police are quashed. Consequently, connected miscellaneous petitions are closed.

Index: Yes/No

15.09.2022

Speaking / Non Speaking Order
gsk

To

- 1.The Inspector of Police,
B-12, Ukkadam Police Station,
Coimbatore.
- 2.The Inspector of Police,
B-2, R.S.Puram Police Station,
Coimbatore.
- 3.The Public Prosecutor,
High Court of Madras.



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