IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2022

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

Crl.O.P.No.10729 of 2019
and Crl.M.P.No.5507 of 2019

1. N.Bhasheer Ahamed
2. A.V.Sekhar ...Petitioners

Vs.

The State Represented by
The Inspector of Police,
Conventional Crime,
Team XIX, Central Crime Branch,
Vepery, Chennai - 600 007.
(Ref Crime No.24/2012 dated 13.01.2012)
...Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records and quash the proceedings pending in C.C.No.9025 of 2018 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai for the offences under Sections 4 and 7(ii) of the State Emblem of India Act (Prohibition of Improper Use) Act, 2005.

For Petitioners : Mr.C.Arunkumar

For Respondent : Mr.A.Kishor kumar
Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed seeking to call for the records and quash the proceedings pending in C.C.No.9025 of 2018 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai for the offences under Sections 4 and 7(ii) of the State Emblem of India Act (Prohibition of Improper Use) Act, 2005.

2. The case of the prosecution is that on 29.12.2009 at Hotel Radha Regent, Arumbakkam, Chennai, the petitioners convened a Party meeting of all Master Franchises from various states and presented them each with a Memento depicting the State Emblem of India ''SATHYAMEVA JAYATHE'' in Hindi version inscribed in it together affixed of Tricolour Flag replica in

the Memento and the same being used for commercial purpose for the development of Franchise net work and promote his training business in Abacus & Mental Arithmetic Education in India. The use of national Flag is in Violation of the provisions contained in Section 4 of the National Emblem & Names (Improper use) Act 1950 and punishable under Section 2 of the State Emblem of India (Prohibition of improper use) Act 2005.

3. The learned counsel appearing for the petitioners have submitted that the prosecution has been initiated criminal proceedings against the petitioners for an offence under Section 4 of the State Emblem of India Act (Prohibition of Improper Use) Act, 2005 punishable under Section 7(ii) of the State Emblem of India Act (Prohibition of Improper Use) Act, 2005. But on a combined reading of the above Sections, makes it clear that there should be a ''wrongful gain'' to the person who had used the emblem. But in the present case either the First Information Report or the Final Report, does not disclose what is the wrongful gain done by the petitioners herein, by using the emblem. Even in the final report, it is mentioned that the emblem had been given as a Memento which itself shows that there is no intention to make wrongful gain. Therefore no offence is made out even as per the final report submitted by the prosecution and hence, the entire proceedings is liable to be quashed.

4. The learned counsel for the petitioners also further submitted that as per the penal provisions code, the offence under Section 4 is punishable under Section 7(ii) of the Act 2005 and the punishment provided is imprisonment for a term, which shall not be less than six months, which may extend to two years and with fine, which may extend to five thousand rupees. Hence, the offence for which the petitioners are charged is a Non-Cognizable offence which has to be carried out only after obtaining the orders of the Magistrate under Section 155(2) Cr.P.C., but the respondent police had not followed the procedure. Hence, he prayed to quash the proceedings. He further submitted that the petitioners also prayed for quash the proceeding on the ground that the prosecution pointed out that the alleged function was held in the year 2009 wherein the defacto complainant also one of the partner and nearly about 3 years. Later, he gave a complaint in the year 2011, after the alleged occurrence, the FIR was registered on 13.01.2012 based upon the complaint addressed to the Chief Minister Cell and further contend that the delay has not been explained on the side of the defacto complainant.

5. The learned Government Advocate (Crl.Side) appearing for the respondent submitted that the petitioners committed offence and after examination of the witnesses, the Investigating Agency has filed a final report and the same was taken on file in

C.C.No.9025 of 2018 before the Chief Metropolitan Magistrate, Egmore, Chennai and the same is pending before the said Court.

6. On considering the submissions made on either side and on perusal of the record, it reveals that the defacto complainant also participated in the function which was held on 29.12.2009 and it is an admitted fact that he is co-competitor of the business viz., the defacto complainant is running an Educational Institute providing Training to the Young Children of age between 4 and 12 years to do mathematical calculations. Further, the defacto complainant had malafide intention. At that time of function i,e., on 29.12.2009, the defacto complainant herein was a master franchise and later he was removed from the master franchise due to the issues among them.

7. It is an admitted fact that the defacto complainant has also participated in the function which was held on 29.12.2009 at Hotel Radha Regent, Arumbakkam, Chennai. It is also reveals that he was one of the master franchise and later, he was removed from the master franchise due to issues among the petitioners and the defacto complainant. Further, the petitioners also addressed legal notice in the capacity as Managing Director claiming a sum of Rs.30 Lakhs due from the defacto complainant. Aggrieved by the same, he gave a complaint belatedly with malafide intention. Furthermore, on perusal of the entire records reveals that on 29.12.2009 the petitioners herein headed the Company UCMAS ( Universal Concept Mental Arithmetic System) India Pvt Ltd, he was entered and arranged function in order to expand his business and the members of the political parties joining in that function. These petitioners also participated and he invited all his master franchise from various states, and he presented the memento by using State Emblem without permission from the Government. Hence, the defacto complainant given a complaint.

8. But, on perusal of the final report reveals that in the function which was held in the year 2009, the petitioners has presented the memento using the State Emblem and the petitioners are charged for an offence under Sections 4 of of the State Emblem of India (Prohibition of Improper Use ) Act ,2005 which are as follows:-

> ''No person shall use the emblem for the purpose of any trade, business, calling or profession or in the title of any patent, or in any trade mark or design, except in such cases and under such condition as may be prescribed.''

Therefore, the object of the said Section is that the emblem should not be used for wrongful gain. On perusal of the complaint given by the second respondent, there is no allegation that the petitioners used the emblem for wrongful gain and no material produced to substantiate his allegation. On the other hand, as per the final report submitted by the respondent police, the use of emblem would it amounts to wrongful gain.

9. On seeing the conduct of the defacto complainant who is having close association with the petitioners due to his business set back and to wreck vengeances, he gave this complaint nearly about 3 years after the alleged occurrence which was held in the year 2009.

10. The conduct of the defacto complainant clearly show that in order to harass the petitioners, he gave this complaint belatedly and there is no material evidence to show that the emblem was used for commercial purpose. It is a clear case of abuse of process of law. The petitioners would be put to hardship, if the criminal proceedings initiated against the petitioners is not quashed.

11. Therefore, considering those facts, this Court is inclined to quash the proceedings in C.C.No.9025 of 2018 on the file of the Chief Metropolitan Magistrate, Egmore, Chennai. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

//True Copy//

Sub Assistant Registrar

msrm

To

1.The Chief Metropolitan Magistrate,
Egmore, Chennai - 8.

2.The Inspector of Police,
Conventional Crime,
Team XIX, Central Crime Branch,
Vepery, Chennai - 600 007.

3.The Public Prosecutor,
Madras High Court.

+3ccs to Mr.C.Arunkumar, Advocate SR. No. 34400

Crl.O.P.No.10729 of 2019
and Crl.M.P.No.5507 of 2019

JPL (CO)
PR (06/07/2022)