

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 20.01.2022

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

Crl.O.P.Nos.7332 of 2017 and 6408 of 2018

&

Crl.M.P.Nos.5304 and 5305 of 2017 and 3267 and 3268 of 2018

Kolathur T.S.Mani
S/o.T.M.Sengodan

... Petitioner
in Crl.O.P.No.7332 of 2017

P.Maniyarasan
S/o.Periyasamy

... Petitioner
in Crl.O.P.No.6408 of 2018

Vs.

The State rep. By its
Inspector of Police
Karungpalayam Police Station
Erode District
(Crime No.1051/2008)

... Respondent
in Crl.O.P.No.7332 of 2017

1. State by

The Inspector of Police
Karungpalayam Police Station
Erode District
(Cr.No.1051/2008)

... Respondent/Complainant
in Crl.O.P.No.6408 of 2018

2. Mr.N.Kathirvel

The Sub-Inspector of Police
Erode North Police Station
Erode District

... Respondent/Defacto complainant
in Crl.O.P.No.6408 of 2018

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C to call for the records in C.C.No.140 of 2010 in Crime No.1051 of 2008 on the file of the learned Judicial Magistrate No.I at Erode and quash the same.

For Petitioner : Mr.R.Thirumoorthy
in CrI.O.P.No.7332 of 2017

Mr.D.Ashok Kumar
in CrI.O.P.No.6408 of 2018

For Respondents: Mr.S.Vinoth Kumar
Govt. Advocate (CrI.side)
in both OPs

COMMON ORDER

The petitioners in these petitions are arrayed as A2 and A3 in C.C.No.140 of 2010 for the alleged offences punishable under Section 13(1)(b) of Unlawful Activities Prevention Act, 1967 and Section 505 (1)(b) of IPC.

2. The charge against the petitioners/accused is that on 14.12.2008 at about 07.00pm at Thirunagar Colony, Karungalpalayam, Accused 1 to 3 made speeches in a public meeting in support of liberation tigers of Tamil Eelam, an association declared to be unlawful by a notification issued under sub-section (1) of Section (3) of the Unlawful activities prevention Act, 1967 thereby abetted unlawful activities and also incited the public to commit an offence against public tranquility.

3. The learned counsel appearing for the petitioners submitted that the only allegation against these petitioners is that the petitioners have supported the liberation tigers and also spoke about the leader of LTTE as humanitarian and his national liberation and expect that, there was no other allegation found in the entire materials unearthed by the prosecution. It is the contention of the learned counsel for the petitioners that such allegations do not constitute an offence to attract Section 13(1)(b) of Unlawful Activities Prevention Act, 1967. Further, such statement never incites any individual or group of individuals or intended to disrupt the sovereignty and territorial integrity of India and there is no allegation in the entire materials that any fear or alarm was caused by such statement to the public and no material is available on record to show that the petitioners has incited any class or community of person to commit any offence against any other class or community. The learned counsel, therefore, submits that mere speeches made in the public meeting praising the leader of LTTE as a liberation leader and humanitarian do not constitute an offence and therefore, the prosecution initiated against the petitioners is motivated due to political reasons and seeks to quash the same.

4. The learned counsel appearing for the respondents submitted that the only grievance of the petitioners is that the sanction was not obtained for launching the prosecution against these petitioners, but the sanction was granted by the State to prosecute these petitioners and these petitioners spoke against the banned organization.

5. I perused the entire materials placed before this Court.

6. As rightly pointed out by the learned counsel for the petitioners, the entire materials, particularly all the statements of the witnesses is that A3 called the leader of LTTE as national liberation leader and humanitarian and he is not autocratic. A3 has also supported their cause. Except these allegations, there is no other allegation found in the materials collected by the prosecution to indicate that such speech has, in fact, falls within the ambit of any of the ingredients of Section 13(1)(b) of Unlawful Activities Prevention Act, 1967 or Section 505(1)(b) of IPC.

7. It is relevant to refer to the definition of "Unlawful Activity" found in sub-section (o) of Section 2, which reads as follows:-

"(o) "unlawful activity", in relation to an individual or association, means any action taken by such individual or association (whether by committing an act or by words, either spoken or written, or by signs or by visible representation or otherwise),-

(i) which is intended, or supports any claim, to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession; or

(ii) which disclaims, questions, disrupts or is intended to disrupt the sovereignty and territorial integrity of India; or

(iii) which causes or is intended to cause disaffection against India;"

8. A careful perusal of the above definition makes it clear that to consider any act as an unlawful activity, the words spoken should be intended or should support any claim to bring about, on any ground whatsoever, the cession of a part of the territory of India or the secession of a part of the territory of India from the Union, or which incites any individual or group of individuals to bring about such cession or secession. Similarly, there must be an intention to disrupt the sovereignty

and territorial integrity of India or which intended to cause disaffection against India. Only if the words spoken or uttered fit into these categories, such act would be called as unlawful activities. Similarly, it is not the case of the prosecution that the petitioners abetted or incited the commission of any unlawful activity. It is also not the case of the prosecution that the petitioners assisted the banned organization to attract the offence under Section 13(2) of the Unlawful Activities Prevention Act, 1967. The petitioners have only made speeches in a public gathering about the LTTE leader and described him as humanitarian. Such statement in the considered view of this Court will never fall within the ambit of penal provisions to attract the offences alleged in the complaint.

9. Even if the entire statements are taken together, there is no material to bring any of the statements made by the petitioners within the ambit of Section 505 of IPC also and it is not the case of the prosecution that such statement made by the petitioners caused fear and alarm to the public or to any section of public whereby any person was induced to commit an offence against the State or against the public tranquility. Similarly, there was no averments or materials to show that the petitioners with an intention to incite any class or community of person to commit any offence made such speeches. Therefore, as far as these petitioners are concerned, the words spoken by them would at best amount to praising the leader for his cause for liberation of certain community. Except that, there is no other material to show that the words spoken by the petitioners comes within the ambit of offences punishable under Section 13 (1)(b) of Unlawful Activities Prevention Act, 1967 and Section 505 (1)(b) of IPC.

10. In such view of the matter, this Court is of the view that continuation of prosecution in this case is nothing but a futile exercise and forcing the parties to undergo the ordeal of trial is also a clear abuse of process of law.

11. Accordingly, both the Criminal Original Petitions are allowed and the case in C.C.No.140 of 2010 on the file of the learned Judicial Magistrate No.I at Erode is quashed as far as these petitioners are concerned. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

gpa/gba

To

1. The Judicial Magistrate I,
Erode.
2. -Do- Thro The Chief Judicial Magistrate,
Erode.
3. The Inspector of Police,
Karungalpalayam Police Station,
Erode District.
4. The Sub-Inspector of Police,
Erode North Police Station,
Erode District.
5. The Public Prosecutor,
Madras High Court, Chennai - 104.

+1cc to Mr.C.Vijaya Kumar, Advocate Sr.3832

Crl.O.P.Nos.7332 of 2017 and 6408 of 2018 &
Crl.M.P.Nos.5304 and 5305 of 2017 &
3267 and 3268 of 2018

mt[col]
srg 02/02/2022