



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.03.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD) No.834 of 2020

in

Crl.M.P(MD)No.358 of 2020

WEB COPY

1. V.Vins

2. J.Bright Singh John

...Petitioners/Accused No.2 & 3

Vs.

1. The Inspector of Police,
Thukalay Police Station,
Nagercoil,
Kanyakumari District.
(Crime No.602 of 2019)

...Respondent No.1/Complainant

2. Kumar
Head Constable-420,
Thukalay Police Station,
Kanyakumari District.

...Respondent No.2/
Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying this Court to call for the records pertaining to the First Information Report in Crime No.602 of 2019 dated 28.11.2019 on the file of the respondent No.1 for offence Under Sections 353 of Indian Penal Code 1860 and Ss.71 of Information Technology Act, 2000 and quash the same as illegal as against the petitioner alone.

For Petitioner : M/s.T.Lajapathi Roy

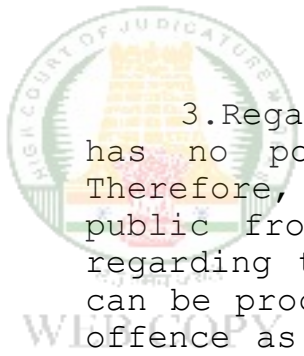
For R1& R2 : Mr.R.M.Anbunithi

Additional Public Prosecutor

ORDER

The petition has been filed to quash the FIR registered in Crime No.602 of 2019, for the offences under Section 353 of IPC and Section 71 of Information Technology Act, 2002.

2.On the complaint lodged by the second respondent, the FIR has been registered in Crime No.602 of 2019 alleging that on 11.09.2019, the petitioners and along with their accused persons were commented the police page in facebook and stated that it is a fake page and sent report and continuously commented in their facebook page. The facebook account has been created by the respondents for the public purpose to receive comments but the petitioners had doubted about their site and reported to the facebook.



3.Regarding the Hon'ble Supreme Court judgment, the respondent has no power to restrain the general public from commenting. Therefore, the respondent have no power to restrain the general public from commenting and the petitioners have right to report regarding the fake page to the facebook and majority of the report can be proceeded in that page. Therefore, it would not attract any offence as alleged in the FIR to attract the offence under Section 71 of the Information Technology Act, 2000. It is relevant to extract the Section 71 of the Information Technology Act:

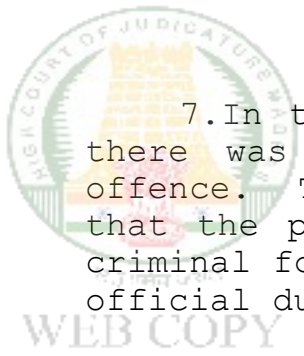
'Whoever makes any misrepresentation to, or suppresses any material fact from the Controller or the Certifying Authority for obtaining any license or Electronic Signature Certificate as the case may be, then he shall be liable to pay penalty upto Rs.1,00,000/- or imprisonment upto 2 years or both.'

4.Therefore, there should be an allegation that the petitioners had made any representation or suppressed any fact from the controller or the certifying authority for obtaining any license or digital signature certificate. Hence, it has no ingredient to attract the offence under Section 71 of the Information Technology Act.

5.Insofar as the offence under Section 353 of IPC is concerned, it is relevant to extract the provision of Section 353 of IPC:

'Assault or criminal force to deter public servant from discharge of his duty.—Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.'

6.In this regard, the learned Counsel appearing for the petitioners relied upon the judgment reported in **(2015) 7 SCC 423 in Manik Taneja Vs State of Karnataka**, in which, order of the Hon'ble Supreme Court held as that it has been seen whether by posting a comment on the facebook of the traffic police, the conviction under Section could be maintainable. Before considering the materials on record and on reading of the provision under Section 353, the essential ingredients of the offence under Section 353 of IPC are that the accused person of the offence should have assaulted the police or used criminal force with the intention to prevent or deter the public servant from discharging his duty as such public servant.



7.In the case on hand, on perusal of records, it appears that there was no force used by the petitioners to commit such an offence. That apart, there is absolutely nothing on record to show that the petitioners either assaulted the respondents or used any criminal force to prevent the second respondent from discharging his official duty.

8.Therefore, the ingredients of the offence under Section 353 of IPC are not made out in the case and the FIR in Crime No.602 of 2019 do not have any cognizable offence and it has no legs to stands.

9.With the above observation, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is also closed.

Sd/-

Assistant Registrar (AD I)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

lr

To

1. The Inspector of Police,
Thukalay Police Station,
Nagercoil,
Kanyakumari District.

2. The Head Constable-420,
Thukalay Police Station,
Kanyakumari District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.T.LAJAPATHI ROY, Advocate (SR-10536[F] dated
08/03/2022)

Crl.O.P.(MD) No.834 of 2020
07.03.2022

MGJ(25.03.2022) 3P 5C