



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.02.2022

Pronounced on: 25.04.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)No.996 of 2022

and

Crl MP (MD)Nos.707 & 708 of 2022

Joe Victoria Diyas

... Petitioner/Accused No.2

Vs.

N.Askar Ali

...1st Respondent/ Complainant

Prayer : Criminal Original Petition filed under Section 482 Cr.P.C, to call for the records relating to the private complaint in C.C No.165 of 2014 pending on the file of the Judicial Magistrate Court No.1, Ramanathapuram and quash the same as against the petitioner.

For Petitioner : Mr.P.Sengutturasan

For Respondent : Mr.S.A.S.Alaudeen

ORDER

Heard the learned counsel for the petitioner and the learned counsel for the respondent.

2.The respondent filed the impugned private complaint before the Judicial Magistrate Court No.1, Ramanathapuram and the same was taken on file in C.C No.165 of 2014. The second accused in the said complaint has filed this criminal original petition for quashing the impugned proceedings. The case of the complainant is that on 06.09.2013, a rath carrying a statue of Swami Vivekananda passed through Vannangundu in Ramanathapuram District and that school children were lined up on the street to welcome the rath and that when he questioned the petitioner herein who was the Deputy Head Mistress of the Government High School, Vannangundu as to how she could have offended the religious sentiments of the muslim

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children, the petitioner uttered the following words :

“2ம் எதிரி மனுதாரரைப் பார்த்து டேய் துலுக்க நாயே உனக்கு இங்கு என்னடா வேலை நாங்கள் அப்படித்தான்டா இந்து முறைப்படி எனது ஸ்கூலை நடத்துவோம். உன்ன மாதிரி துலுக்க நாய்ங்க பிள்ளைகளையும் இந்துவாத்தாம் நடத்துவோம் என்றார்....”

The third accused is said to have thrown an object at the complainant but he escaped unhurt. Allegations have been made against the other accused also.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the memorandum of grounds and called upon this Court to quash the impugned prosecution.

4.The learned counsel appearing for the respondent submitted that the inherent powers of this Court cannot be invoked in this case in view of the factual nature of the controversy. Whether the petitioner uttered the offending words or not can only be decided at the time of trial. He called upon this Court to dismiss this Criminal Original Petition.

5.I carefully considered the rival contentions and went through the materials on record. It must be noted at the very outset that the petitioner is a 53 year old woman and a Christian. It is inherently improbable that the petitioner would have uttered the words mentioned above that too at the complainant who is a jamath leader. It is well known that in Ramanathapuram, Muslims are in large numbers. The allegations are absurd. Swami Vivekananda cannot be exclusively appropriated by any particular religion or community. Swami Vivekananda inspired the freedom movement and its leaders. Paying homage to Swami Vivekananda cannot by any stretch of imagination be said offend the feelings and sentiments of Muslims.

6.Before the judicial magistrate, the respondent, a local auto driver and a petty businessman were examined as witnesses. No child complained of compulsion. Neither any child nor any parent was examined. The occurrence took place on 06.09.2013. But the complaint was lodged only on 07.11.2013. The complainant is the local jamath leader. He has no locus standi in the matter. It is unfortunate that a purely patriotic act was given communal colour. The Hon'ble Supreme Court in **Prathvi Raj Chauhan vs. Union of India (UOI) and Ors (2020) 4 SCC 727** observed that trinity of constitutional values, namely, liberty, equality and fraternity are intimately linked. However, the articulation of fraternity as a constitutional value, has lamentably been largely undeveloped. The original draft did not contain the expression "fraternity". It was later inserted by the drafting committee under the chairmanship of Dr.Ambedkar. It was felt that the need for fraternal concord and goodwill in India was never greater than now, and that this particular aim of the new Constitution should be emphasized by special mention in the Preamble.



7.The complainant has filed this complaint with utmost malice in his heart. We are already passing through troubled times. Paying respect to Swami Vivekananda cannot be viewed communally. The learned trial magistrate had mechanically taken cognizance of the complaint. The impugned complaint reeks of mala fides. The Hon'ble Supreme Court in ***State of Haryana v. Bhajan Lal (1992) Supp (1) SCC 335*** laid down seven categories of cases by way of illustration wherein the constitutional courts would be justified in invoking the extraordinary power under Article 226 or the inherent powers under Section 482 of Cr.Pc to quash the criminal prosecution. They are as under :

"1.Where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima-facie constitute any offence or make out a case against the accused.

2.Where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers Under Section 156 (1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

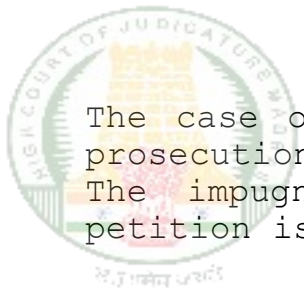
3.Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

4.Where, the allegations in the F.I.R. do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated Under Section 155(2) of the Code.

5.Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

6.Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

7.Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."



The case on hand attracts the 5th and 7th parameters. Allowing the prosecution to continue would only be an abuse of legal process. The impugned prosecution stands quashed. The criminal original petition is allowed. Connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

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To

1. The Judicial Magistrate Court No.1, Ramanathapuram
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN
Crl.O.P. (MD)No.996 of 2022
and
Crl MP (MD)Nos.707 & 708 of 2022
25.04.2022

PKP/09.06.2022/4P/3C