



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10/03/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P. (MD)No.6592 of 2019

and

Crl.MP (MD)Nos.4387 and 4388 of 2019

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1.Haja Mohaideen
2.Imthiyas Al-ameen : Petitioners/A1 and A2

Vs.

1.The State rep. By
The Inspector of Police,
Eruvadi Police Station,
Tirunelveli District.
(Crime No.201 of 2013) : R1/Complainant

2.Mrs.Jeya Shree : R2/De-facto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in CC No.157 of 2014 on the file of the District Munsif-cum-Judicial Magistrate, Nanguneri and quash the same as against the petitioners.

For Petitioners : Mr.S.A.S.Alaudeen
For 1st Respondent : Mr.P.Kottai Samy
Government Advocate (Crl. side)
For 2nd Respondent : Mr.V.M.Jegadeesh Pandian

O R D E R

This criminal original petition is filed seeking quashment of the case in CC No.157 of 2014 on the file of the District Munsif-cum-Judicial Magistrate, Nanguneri.

2.The case of the respondent in brief:-

On 10/08/2013 at about 11.00 am, the de-facto complainant lodged a complaint before the 1st respondent police stating that on 09/08/2013 at about 8.30 pm, when the de-facto complainant along with the Village Assistant were on their routine duty, they found that the accused persons distributed bit notices. The bit notice contains the following contents:- "Joint hands for retain justice, bomb blast, political assassination, Terrorist fear, Arrests, conspiracy of Intelligence Department and it aiding by Media as inciting against the Government."

3.Based upon the complaint given by the Village Administrative

<https://hcservices.ecourts.gov.in/hcservices/>



Officer, a case in Crime No.201 of 2013 has been registered for the offence under section 153(A)(1)(a) IPC against the petitioners and after completing the investigation process, final report was also filed before the District Munsif-cum-Judicial Magistrate, Nanguneri and it was taken cognizance in CC No.157 of 2014.

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4. Seeking quashment of the same, this petition came to be filed mainly on the ground that sanction under section 196 Cr.P.C was not obtained. So, without going into the other aspects, this petition can be disposed of with a short premise.

5. Section 196 Cr.P.C reads as follows;-

"196. Prosecution for offences against the State and for criminal conspiracy to commit such offence.

(1) No Court shall take cognizance of-

(a) any offence punishable under Chapter VI or under section 153A, of Indian Penal Code, or Section 295 A or sub section (1) of section 505] of the Indian Penal Code (45 of 1860) or

(b) a criminal conspiracy to commit such offence, or

(c) any such abetment, as is described in section 108A of the Indian Penal Code (45 of 1860), except with the previous sanction of the Central Government or of the State Government.

(1A) No Court shall take cognizance of-

(a) any offence punishable under section 153B or sub- section (2) or sub- section (3) of section 505 of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate.]

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal code (45 of 1860), other than a criminal conspiracy to commit an offence] punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the



initiation of the proceedings: Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary.

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(3)The Central Government or the State Government may, before according sanction under sub-section (1) or sub- section (1A) and the District Magistrate may, before according sanction under sub-section (1A) and the State Government or the District Magistrate may, before giving consent under sub- section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in sub- section (3) of section 155."

6.So cognizance has been clearly barred under section 196 Cr.P.C. But how the cognizance has been taken by the trial court is not clear on record. Even though PW1 to PW3, were examined on the side of the prosecution, but they turned hostile. It does not save the illegally, which was committed not only by the first respondent, but also by the trial court. On the sole ground, this petition is liable to be allowed.

7.In the result, this criminal original petition is allowed. The entire impugned proceedings in CC No.157 of 2014 pending on the file of the District Munsif-cum-Judicial Magistrate, Nanguneri is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To,

1.The District Munsif-cum-JUdicial Magistrate,

<https://hcsen.madrascourts.gov.in/hcsen/Files> Nanguneri District.



2.The Inspector of Police,
Eruvadi Police Station,
Tirunelveli District.

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

Crl.O.P. (MD)No.6592 of 2019
10/03/2022

SG(CO)
KB(04.05.2022) 4P 4C