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CrI.O.P.No.29634 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.06.2023

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.29634 of 2022 and
CrI.M.P.No.18130 of 2022

P.Srikandan

... Petitioner

Vs.

1.State rep. by
Inspector of Police,
Nallur Police Station,
Tiruppur City,
(Crime No.504/2022).

2.Nagoor Meeran

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the F.I.R in Crime No.504/2022, on the file of the Inspector of Police, Nallur Police Station, Tiruppur City and quash the same.

For Petitioner : Mr.G.Karthikeyan

For R1 : Mr.A.Gokulakrishnan,
Additional Public Prosecutor

For R2 : Mr.M.Mohamed Saifulla,
Legal Aid Counsel



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ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.504 of 2022, dated 19.08.2022, for offence under Section 2 of The Prevention of Insults to National Honour (Amendment) Act, 2003 [For brevity 'the Act'], on the file of the 1st respondent Police.

2.Gist of the complaint is that the 2nd respondent/defacto complainant on 15.08.2022 had proceeded through Nallur Road, Tiruppur District to meet his friends, at that time, he saw flag post of Hindu Munnani Organization and a name board besides it. In the name board, it has been written that Barathi Nagar East Branch and name of the petitioner Mr.P.Srikandan with his mobile number has been written. The 2nd respondent shocked to see that in the flag post of Hindu Munnani Organization, the national flag had been hoisted. In a political parties flag post, hoisting the national flag, is not proper, which is against law and a serious offence. Hence, the 2nd respondent contacted the Commissioner of Police and informed about the same. Though the 2nd respondent was assured for taking immediate action, no action taken thereafter. Hence, he lodged the complaint with the 2nd respondent

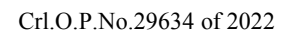


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Police, against which, FIR in Crime No.504 of 2022 registered against the petitioner.

3.Learned counsel for the petitioner submitted that on mere assumption and presumption, the 2nd respondent lodged the complaint. The petitioner is an active Member of Hindu Munnani Organization. Besides the board of Hindu Munnani Organization of Bharathi Nagar, its flag post is available. On 15th August, 2022 being an Independence Day, hoisting of national flag is being done by one and all who are patriotic and love our nation. He further submitted that as per Section 2 of Act, the offence is committed in any public place within the public view burns, mutilates, defaces, defiles, disfigures, destroys, tramples upon otherwise shows disrespect to or brings into contempt (Whether by words, either spoken or written, or by acts) the Indian National Flag or the Constitution of India. In this case, the only complaint is that the National Flag hoisted in Hindu Munnani Organization's flag post. Nowhere in the Act, it is stated that the flag post must be of a particular size, material, colour or height. August 15th, 2022 is an Independence Day, on that day, everybody used to hoist the flag and also wear national



4. He further submitted that the 2nd respondent, who has contrary view against the petitioner's organization, has some grudge and lodged a false complaint against the petitioner. The 1st respondent Police ought to have verified the facts before registration of FIR. In this case, there is no material to prove the allegation made in the complaint and nothing has been seized. Hence, he prayed for quashing the FIR.

5.Learned Additional Public Prosecutor appearing for the 1st respondent Police submitted that on the complaint of the 2nd respondent, a case in Crime No.504 of 2022 registered for offence under Section 2 of the Act against the petitioner on 19.08.2022. After registration of FIR, statement of witnesses recorded. The petitioner, who is an active person of Hindu Munnani Organization, hoisted the national flag on the event of Independence Day celebration in his organization's flag post, which is got a distinct colour giving different impression to the public. He further submitted that investigation is in the initial stage and it cannot be



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continued by filing this Quash Petition.

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6.Learned counsel for the 2nd respondent fairly submitted that on the complaint of the 2nd respondent a case in Crime No.504 of 2022 registered for offence under Section 2 of the Act against the petitioner on 19.08.2022, thereafter, what is the stage of the investigation, he is not aware. He further submitted that in the Act, there is specification with regard to physical handling of national flag, but nothing stated about the flag post, its colour and physical features. He fairly submitted that this Court in the case of “***State Rep by The Inspector of Police, B 12 Police Station Versus D.Senthilkumar, S/o.Dhakshana Moorthy*** reported in ***(2021) 2 MLJ (Crl) 255***”, dealt in detail with regard to the dishonour of national flag and attraction of Section of the Act and registration of criminal case thereon and also held that patriotism is not determined by a gross physical Act and the intention behind the act will be the true test and it is possible that sometimes the very act itself manifests the intention behind it. On the facts of the above case, the learned counsel for the 2nd respondent fairly submitted that there is nothing to even remotely infer that there was any insult to the national flag.



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7. On the submissions and on perusal of the materials, it is seen that a case in Crime No.504 of 2022 registered for offence under Section 2 of the Act. Section 2 of the Act deals with regard to the national flag in public place and manner of handling the national flag and with regard to the hoisting of flag. The only restriction is that the flag should not be half-mast on public except on the instructions issued by the Government. In this case, admitted case of the 2nd respondent is that he saw the national flag in the flag post of Hindu Munnani Organization and nothing invoked. It is to be seen that on 15.08.2022 is the Independence day, on which day, it is usual that the national flag are hoisted in Government and private buildings, educational institutions and other places. It is also a celebration day for political parties to hoist national flag and distribute sweets. The complaint is that while the 2nd respondent was passing by, he saw the national flag in the flag post of Hindu Munnani Organization and nothing more. The Act does not state about the physical features of the flag post. The concept is that the entire nation is to celebrate this National Day and cherish the day of hard earned independence.

8. In view of the above, attributing malice by the 2nd respondent is



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not proper. The 1st respondent Police ought to have shown some restrain before registration of FIR and ought to have verified the facts.

9.From the above facts and taking uncontroverted version of the complaint, this Court finds that the continuation of the proceedings against the petitioner would amount to abuse of process of law.

10.In the result, the FIR in Crime No.504 of 2022, on the file of the 1st respondent Police is hereby quashed against the petitioner. Accordingly, this Criminal Original Petition is allowed.

11.This Court places appreciation to Mr.M.Mohamed Saifulla, Legal Aid Counsel for the 2nd respondent, who made fair submissions expected of an Advocate and brought to the notice of this Court about the decision cited supra. The connected Miscellaneous Petitions are closed.

26.06.2023

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M.NIRMAL KUMAR, J.



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Speaking Order/Non-Speaking Order
Index: Yes/No
Internet: Yes/No
Neutral Citation: Yes/No

To

- 1.The Inspector of Police,
Nallur Police Station,
Tiruppur City, Tiruppur.
- 2.The Public Prosecutor,
High Court, Madras.

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