

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.08.2023

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

Crl.O.P Nos.33597, 33605 and 33678 of 2019
and All connected MPs

Crl.OP.No.33597 of 2019

K.Pandiarajan

... Petitioner/Accused No.2

vs.

1.Sub Inspector of Police
H6 RK Nagar Police Station (L&O)
Chennai-21.

...1st
Respondent/Complainant

2.N.Pandiayan
AE, Flying Squad Zone IV
RK Nagar Assembly
Chennai.

..2nd Respondent/De facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.72 of 2019 pending on the file of Additional Special Court for MPs and MLAs Cases, Singaravelar Maaligai, Chennai and to quash the same.

For Petitioner : Mr.Srinath Sridevan
Senior Counsel
for M/s.Nathan Associates

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor [R1]

Crl.OP.No.33605 of 2019

Kuppan @ Parasivan

... Petitioner/Accused No.1

vs.

1.State of Tamil Nadu rep.by
Sub Inspector of Police
H6 RK Nagar Police Station (L&O)
Chennai-21.

...1st Respondent/Complainant

2.N.Pandiayan
AE, Flying Squad Zone IV
RK Nagar Assembly
Chennai.

..2nd Respondent/De facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.72 of 2019 pending on the file of Additional Special Court for MPs and MLAs Cases,Singaravelar Maaligai, Chennai and to quash the same.

For Petitioner : Mr.K.P.Anantha Krishna

For Respondents : Mr.E.Raj Thilak
Additional Public Prosecutor [R1]

Crl.OP.No.33678 of 2019

Dr.Azaghu Tamil Selvi

... Petitioner/Accused No.3

vs.

State of Tamil Nadu rep.by
Sub Inspector of Police
H6 RK Nagar Police Station (L&O)
Chennai-21.

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.72 of 2019 pending on the file of Additional Special Court for MPs and MLAs Cases, Singaravelar Maaligai, Chennai and to quash the same.

For Petitioner : Mr.D.Ferdinand

For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

COMMON ORDER

The petitioners have filed these quash petitions challenging the proceedings in C.C.No.72 of 2019, pending on the file of Additional Special Court for MPs and MLAs Cases, Singaravelar Maaligai, Chennai.

2.The case of the prosecution is that the procession was organised by the parties belonging to a particular political party and they are said to have re-enacted the State funeral that was offered to the late Chief Minister Dr.J.Jayalalithaa, by keeping an effigy of the late leader in a coffin which was wrapped with the Indian flag. This according to the prosecution was done to unduly influence the minds of the voters and to win their sympathy. It is on these facts, an FIR came to be registered in Crime No.620 of 2017, for offence u/s.171(F) IPC and Section 123(ii)(b) of Representation of the People Act, 1951.

3.The investigation was done by the 1st respondent and ultimately a final report came to be filed before the Court below against the petitioners (A1 to A3) and the Court below took cognizance of the final report for offence u/s 171(F) IPC r/w Section 123(ii)(b) of Representation of the People Act, 1951 and Section 2 of the Prevention of Insult to National Honour Act, 1971. Aggrieved by the same, the present quash petitions have been filed by A1 to A3.

4.Heard Mr.Srinath Sridevan, learned Senior Counsel for petitioner in CrI.OP.No.33597 of 2019, Mr.K.P.Anantha Krishna, learned counsel for petitioner in CrI.OP.No.33605 of 2019, Mr.D.Ferdinand, learned counsel for petitioner in CrI.OP.No.33678 of 2019 and Mr.E.Raj Thilak, learned Additional Public Prosecutor for the respondent (State).

5.The main grounds that were urged by the learned Senior Counsel appearing on behalf of the petitioner in CrI.OP.No.33597 of 2019 and the counsel appearing on behalf of the petitioner in CrI.OP.No.33605 of 2019 and CrI.OP.No.33678 of 2019 is that even if the allegation made in the final report is taken as it is, no offence has been made out u/s.171(F) IPC or u/s.123(ii) of the Representation of the People Act, 1951 or Section 2 of the Prevention of Insult to National Honour Act, 1971. It was further submitted that the offence for which the FIR was registered are non-cognizable offences and the procedure u/s.155 Cr.PC., was not followed and consequently, the entire proceedings stand vitiated.

6.This Court has carefully considered the submissions made on either side and the materials available on record.

7.In order to constitute an offence u/s.171(F) IPC and 123(ii) of the Representation of the People Act, 1951 the allegations that have been made in the

final report read along with the statements recorded from the witnesses must show the main ingredient viz., “undue influence” is made out. It will be more beneficial to take note of the judgment of the Apex Court in **Bachan Singh v. Prithvi Singh** reported in 1975 SCR(3) 439 and the relevant portion is extracted hereunder:

19. Doubtless the definition of “undue influence” in sub-section (2) of Section 123 is couched in very wide terms, and on first flush seems to cover every conceivable act which directly or indirectly interferes or attempts to interfere with the free exercise of electoral right. In one sense even election propaganda carried on vigorously, blaringly and systematically through charismal leaders or through various media in favour of a candidate by recounting the glories and achievements of that candidate or his political party in administrative or political field, does meddle with and mould the independent volition of electors, having poor reason and little education, in the exercise of their franchise. That such a wide construction would not be in consonance with the intendment of the legislature is discernible from the proviso to this clause. The proviso illustrates that ordinarily interference with the free exercise of electoral right involves either violence or threat of injury of any kind to any candidate or an elector or inducement or attempt to induce a candidate or elector to believe that he will become an object of divine displeasure or spiritual censure. The prefix “undue” indicates that there must be some abuse of influence. “Undue influence” is used in contra-distinction to “proper influence”. Construed in the light of the proviso, clause (2) of Section 123 does not bar or penalise legitimate canvassing or appeals to reason and judgment of the voters or other lawful means of persuading voters to vote or not to vote for a candidate. Indeed, such proper and peaceful persuasion is the motive force of our democratic process.

8.It will also be relevant to take note of the judgment of the Apex Court in **Shiv Kirpal Singh V. v. V.Giri** reported in **1971 SCR (2) 197** and the relevant

portions are extracted hereunder:

36. *The electoral right of an elector, as defined in Section 171-A of the Indian Penal Code, means "the right of a person to stand, or not to stand, or to withdraw from being, a candidate or to vote or refrain from voting at an election". It was said that the right to vote envisage two stages; the first stage is when the elector goes through the mental of weighing the merits and demerits of the candidates and then making his choice and the second stage is when having made his choice he goes to cast his vote in favour of the candidate of his choice. The argument was that the language of Section 171-C suggests that undue influence comes in at the second and not at the first stage, and therefore, it can only be by way of some act which impedes or obstructs the elector in his freely casting the vote, and not in any act which precedes the second stage, i., during the stage when he is making his choice of the candidate whom he would support. This argument was sought to be buttressed by the fact that canvassing is permissible during the first stage, and therefore, the interference or attempted interference contemplated by Section 171-C can only be that which is committed at the stage when the elector exercises his right, i., after he has made up his mind to vote for his chosen candidate or to refrain from voting. It was further argued that the words used in Section 171-C were "the free exercise of vote" and not "exercise of free vote". The use of those words shows that canvassing or propaganda, however virulent, for or against a candidate would not amount to undue influence, and that under influence can only mean some act by way of threat or fear or some adverse consequence administered at the time of casting the vote.*

37. *We do not think that the Legislature, while framing Chapter IX-A of the Code ever contemplated such a dichotomy or intended to give such a narrow meaning to the freedom of franchise essential in a*

representative system of Government. In our opinion the argument mentioned above is fallacious. It completely disregards the structure and the provisions of Section 171-C. Section 17-C is enacted in three parts. The first sub-section contains the definition of "undue influence". This is in wide terms and renders a person voluntarily interfering or attempting to interfere with the free exercise of any electoral right guilty of committing undue influence. That this is very wide is indicated by the opening sentence of sub-section (2), i.e. "without prejudice to the generality of the provisions of sub-section (1)". It is well-settled that when this expression is used anything contained in the provisions following this expression is not intended to cut down the generality of the meaning of the preceding provision. This was so held by the Privy Council in *King Emperor v. Sibnath Banerji*.

38. It follows from this that we have to look at sub-section (1) as it is without restricting its provisions by what is contained in sub-section (2). Sub-section (3) throws a great deal of light on this question. It proceeds on the assumption that a declaration of public policy or a promise of public action or the mere exercise of a legal right can interfere with an electoral right, and therefore it provides that if there is no intention to interfere with the electoral right it shall not be deemed to be interference within the meaning of the section. At what stage would a declaration of public policy or a promised public action act and tend to interfere? Surely only at the stage when a voter is trying to make up his mind as to which candidate he would support. If a declaration of public policy or a promise of public action appeals to his mind would decide in favour of the candidate who is propounding the public policy or promising public action. Having made up his mind he would then go and vote and the declaration of public policy having had its effect it would no longer have any effect on the physical final act of casting his vote.

39. Sub-section (3) further proceeds on the basis that the expression "free exercise of his electoral right" does not mean that a voter is not to be influenced. This expression has to be read in the context of an election in the democratic society and the candidates and their supporters must naturally be allowed to canvas support by all legal and legitimate means. They may propound their programmes, policies and views on various questions which are exercising the minds of the electors. This exercise of the right by a candidate or his supporters to canvass support does not interfere or attempt to interfere with the free exercise of the electoral right. What does, however, attempt to interfere with the free exercise of an electoral right is, if we may use the expression, "tyranny over the mind". If the contention of the respondent is to be accepted, it would be quite legitimate on the part of a candidate or his supporter to hypnotise a voter and then send him to vote. At the stage of casting his ballot paper there would be no pressure cast on him because his mind has already been made up for him by the hypnotiser.

The freedom of election is two-fold; (1) freedom in the exercise of judgment. Every voter should be free to exercise his own judgment, in selecting the candidate he believes to be best fitted to represent the constituency; (2) Freedom to go and have the means of going to the poll to give his vote without fear or intimidation." and

9. It is quite apparent from the above judgments that the term "undue influence" must be understood in contradistinction to "proper influence". To constitute the same, there must be sufficient materials to show that the act has the tendency of overcoming the will of one person by the other who is superimposing

his will on the weaker party.

10.In the instant case, the allegation made against the accused person is that they had re-enacted the State funeral that was offered to the late Chief Minister Dr.J.Jayalalithaa, by keeping her effigy in a coffin and it was wrapped up with an Indian flag. According to the prosecution, this was done to win the sympathy of the voters and thereby, an attempt was made to unduly influence their minds.

11.It is quite clear from the above judgements that the term “undue influence” cannot be given such a wide interpretation. The mere act of garnering sympathy of the voters in the name of the late former Chief Minister Dr. J.Jayalalithaa, does not in any manner interfere with the free exercise of the electoral rights to constitute an act of “undue influence”. Hence, no offence has been made out u/s.171 (A) IPC r/w Section 123(ii)(b) of the Representation of the People Act, 1951.

12.The next issue is as to whether the allegations made in the final report constitutes an offence u/s.2 of the Prevention of Insult to National Honour Act, 1971.

13.This Court had an occasion to deal with the scope of this provision in **State rep.by the Inspector of Police, Coimbatore .v. D.Senthil Kumar**, reported in **2021 1 LW CrI.652**. While interpreting the provision, this Court held as follows :

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41.*For any act to be termed as an offence under Section 2, Actus Reus and Mens Rea should be established. The Actus Reus being any of the actions in Section 2 and explanation 4 and the mens Rea being the intention to show disrespect or contempt.*

14.It is clear from the above that to bring the act under Section 2, there must be an Actus Reus which are the actions specified u/s.2 and explanation 4 and it must be accompanied with an intention to show disrespect or contempt.

15.In the instant case, the re-enactment of the State funeral that was offered late former Chief Minister Dr.J.Jayalalithaa, will not fall within the scope of Section 2 of the Prevention of Insult to National Honour Act, 1971. In view of the same, no offence has been made u/s. Section 2 of the Prevention of Insult to National Honour Act, 1971.

16.Apart from the above reasons, it is also seen that Section 171 (F) IPC r/w Section 123(ii)(b) of the Representation of the People Act, 1951 and Section 2 of the Prevention of Insult to National Honour Act, 1971, are non-cognizable offences. An FIR has been straightaway registered by the respondent Police without following the procedure contemplated u/s 155(1) and (2) Cr.PC. In view of the same, the entire proceedings stands vitiated and the proceedings pending against the petitioners is liable to be interfered on this ground also.

17. In the light of the above discussion, the continuation of the proceedings as against the petitioners (A1 to A3) will only result in abuse of process of Court which requires the interference of this Court u/s 482 Cr.PC. Accordingly, the proceedings in C.C.No.72 of 2019, pending on the file of Additional Special Court for MPs and MLAs Cases, Singaravelar Maaligai, Chennai, is hereby quashed and all these criminal original petitions stand allowed. Consequently, connected miscellaneous petitions are closed.

03.08.2023

Index : Yes/No
Speaking Order/Non-Speaking Order
Neutral citation : Yes/No
KP

To

1. Sub Inspector of Police
H6 RK Nagar Police Station (L&O)
Chennai-21.
2. Additional Special Court for
MPs and MLAs Cases,
Singaravelar Maaligai, Chennai.
3. The Public Prosecutor,
High Court of Madras,
Madras.

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N. ANAND VENKATESH., J
KP

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