



Crl.O.P.(MD)No.5857 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.04.2023**

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CORAM:

THE HONOURABLE MRS.JUSTICE **R.THARANI**

Crl.O.P.(MD) No.5857 of 2020

1.Akarathi

2.Manuel Amalraj

3.Jegan@Jeganathan

... Petitioners/Accused Nos.1 to 3

Vs.

1.The State rep. by

The Inspector of Police,

Thallakulam Police Station,

Madurai District

(In Crime No.1384 of 2017)

... 1st respondent/complainant

2.A.Azhugamuthu

... 2nd Respondent/ defacto complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the charge sheet in C.C.No.4 of 2018, on the file of the Judicial Magistrate No.II, Madurai and quash the same in respect of the petitioners as illegal.

For Petitioners : Mr.A.Jayaramachandran

For Respondents : Mr.M.Sakthi Kumar
Government Advocate (Crl.Side)for R1

: No appearance for R2



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ORDER

This petition is filed to quash the charge sheet in C.C.No.4 of 2018, on the file of the Judicial Magistrate No.II, Madurai.

2. The allegation against the petitioners is that on 15.10.2017, at about 4.00 pm., the petitioners and others gathered in front of the American College entrance and they distributed Pamphlets, from Goripalayam to Thallakulam in support of the ongoing Anti – Hydro Carbon Project protest at Neduvasal, where by, they induced the students and youth against the Central and State Governments. A case in Crime No.1384 of 2017 was registered under Sections 153, 505 (1)(b) of I.P.C and Section 7(1)(a) of Criminal Law Amendment Act against the petitioners and the charge sheet was taken on file as C.C.No.4 of 2018, on the file of the Judicial Magistrate No.II, Madurai.

3. On the side of the petitioners, it is stated that the case is ex-facie illegal, arbitrary and the case does not disclose any cognizable offence. Even as per the complaint and 161(3) of Cr.P.C statement of the second respondent, no specific overt act or allegation was attributed



against the petitioners. An assembly of persons to express dissatisfaction of the governance and claiming the rights that are guaranteed to the citizen. Such assembly of persons cannot be an offence. The petitioners are having the fundamental rights to express their dissatisfaction. The first and second petitioners are Lawyers by profession, the third petitioner is a post graduate degree holder and a false case is foisted against them and the same is to be quashed.

4. On the side of the petitioners, it is further stated that the allegation against the petitioner is distributing pamphlets against the Hydrocarbon Project. The petitioners have not conducted any unlawful assembly. Issuing pamphlet cannot be in violation of any rules and regulations. The petitioner has not disturbed the public, the Government is duty bound to protect the fundamental rights of the public and the public is having the rights to raise protest. The petitioners have not conducted any human chain protest. They only distributed pamphlets. Similar cases were already withdrawn by the Government. For lodging a complaint under section 505 (1)(b) of I.P.C, Section 165 of Cr.P.C is to be followed.



5. On the side of the petitioners, a judgment of this Court, in Crl.O.P(MD)No.5860 of 2018, dated 06.03.2019, is cited, wherein, the the charge sheet under Section 353 of I.P.C and Section 7(1) of Criminal Law Amendment Act was quashed by this Court.

6. On the side of the petitioners, another judgment of this Court, in Crl.O.P(MD)No.23298 of 2019, dated 02.01.2020, is cited, wherein, this Court has quoted the Judgment of the Hon'ble Supreme Court reported in 1989-2-SCC-574 (S.Rangarajan V. P.Jagivan Ram), wherein, the Supreme Court has held as follows:-

“The fundamental freedom under Article 19(1)(a) can be reasonably restricted only for the purposes mentioned in Article 19(2) and the restriction must be justified on the anvil of necessity and not the quicksand of convenience or expediency. Open criticism of government policies and operations is not a ground for restricting expression. We must practice tolerance to the views of others. Intolerance is as much dangerous to democracy as to the person himself.”



7. On the side of the petitioners, another judgment of this Court, in Crl.O.P.No.17866 of 2020, dated 06.07.2022 is cited, wherein, this court has held that for registering a case under Section 153-A and 505 of I.P.C require previous sanction as contemplated under Section 196 of Cr.P.C.

8. On the side of the prosecution, it is stated that the petitioners 1 and 2 are practising Advocates and they are aware of the consequences and the offences under Sections 153-A and 155 (1)(b) and 7 (1a) of Criminal Law Amendment Act are made out against the petitioners and prayed the petition to be dismissed.

9. 153A of I.P.C reads as follows:-

153A. Promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony —

(1) Whoever— (a) by words, either spoken or written, or by signs or by visible representations or otherwise, promotes or attempts to promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, disharmony or feelings of enmity, hatred or ill-will



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between different religious, racial, language or regional groups or castes or communities, or

(b) commits any act which is prejudicial to the maintenance of harmony between different religious, racial, language or regional groups or castes or communities, and which disturbs or is likely to disturb the public tranquillity, or

(c) organizes any exercise, movement, drill or other similar activity intending that the participants in such activity shall use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, or participates in such activity intending to use or be trained to use criminal force or violence or knowing it to be likely that the participants in such activity will use or be trained to use criminal force or violence, against any religious, racial, language or regional group or caste or community and such activity for any reason whatsoever causes or is likely to cause fear or alarm or a feeling of insecurity amongst members of such religious, racial, language or regional group or caste or community, shall be punished with imprisonment which may extend to three years, or with fine, or with both. Offence committed in place of worship, etc.—

(2) Whoever commits an offence specified in sub-section (1) in any place of worship or in any assembly engaged in the performance of religious worship or



religious ceremonies, shall be punished with imprisonment which may extend to five years and shall also be liable to fine.

10. Section 505 (1)(b) of I.P.C reads as follows:

505. Statements conducing to public mischief—

(1) Whoever makes, publishes or circulates any statement, rumour or report,—

(a) with intent to cause, or which is likely to cause, any officer, soldier, sailor or airman in the Army, Navy or Air Force of India to mutiny or otherwise disregard or fail in his duty as such;

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility;

11. For registering a case under Sections 153A and 155 (1) (b) of I.P.C., the prosecution has to obtain sanction as contemplated under Section 196 Cr.P.C., before taking cognizance of those offence. On the side of the prosecution, no such previous sanction was mentioned.

12. Section 196 of the Code of Criminal Procedure 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, section 295A or subsection (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.”

13. Section 7 (1) (a) of the Criminal Law Amendment Act reads as follows:-

“7. Molesting a person to prejudice of employment or business.— (1) Whoever— (a) with intent to cause any person to abstain from doing or to do any act which such person has a right to do or to abstain from doing, obstructs or uses violence to or intimidates such person or any member of his family or person in his employ, or loiters at or near a place where such person or member or employed person resides or works or carries on business or happens to be, or persistently follows him from place to place, or interferes with any property owned or used by him or deprives him of or hinders him in the use thereof “



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14. Article 19A of the Constitution of India guarantee the public freedom of speech. Open criticism regarding the Government policies and operations is not a ground for violating the freedom of expression.

15. In G.O.(Ms.)No.368, Home (Courts – IV) Department, dated 04.09.2021, the Government has withdrawn the case against the press and media, who protest against the Koodankulam Nuclear Power Project and Eight Line road project. A similar cases in C.C.No.170 of 2018 on the file of the Judicial Magistrate No.IV, Madurai, was withdrawn by the Government. An online E-Court services, daily case status, was annexed, wherein, a similar case registered in C.C.No.170 of 2018 under sections 153A, 505(1)(b) of I.P.C and Section 7 (1)(a) of the Criminal Law Amendment Act was withdrawn by the Government.

16. Considering that the previous sanction for taking cognizance of a case under Sections 153 and 505 (1)(b) I.P.C. was not obtained by the prosecution and considering that distribution of a pamphlets can not be named as indulging in a protest and considering the fact that the petitioners are having the rights to express their



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dissatisfaction regarding a project in a peaceful manner, without any hindrance to the public and considering the fact that the similar cases were already withdrawn by the Government, the case in C.C.No.4 of 2018, on the file of the Judicial Magistrate No.II, Madurai, is hereby quashed and this Petition is allowed.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
Ls

13.04.2023

To

1.The Judicial Magistrate No.II,
Madurai.

2.The Inspector of Police,
Thallakulam Police Station,
Madurai District

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



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