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Crl.O.P.(MD)No.14708 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	22.08.2023
Delivered on	26.09.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.14708 of 2023

and

Crl.M.P.(MD) Nos.11604 and 11605 of 2023

Samuel George Kalaiyarasar

... Petitioner/ Sole Accused

Vs.

1. The Inspector of Police,
Marthandam Police Station,
Kanyakumari District.
(Crime No.151/2021)

... 1st Respondent/Complainant

2.Arichandran

... 2nd Respondent/
Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to quash all the further proceedings of the case in STC No.1395 of 2022 on the file of the learned Judicial Magistrate No.1, Kuzithurai.

For Petitioner : Mr.R.Babu Jaganath



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For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor for R1

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ORDER

This petition is filed seeking quashment of charge sheet in STC No.1395 of 2022 pending on the file of the learned Judicial Magistrate No.1, Kuzithurai against the petitioner/accused for the offences punishable under Sections 188 of IPC and 127A(1) of the Representation of People Act, 1951.

2.The defacto complainant who has been working as the Cooperative Sub-Registrar is directed to act as a member of flying squad of No.233, Vilancode Legislative Assembly constituency. On 28.03.2021 at about 6.32 p.m., when the defacto complainant was making rounds in the constituency along with his team, he found that a vehicle bearing registration No.TDC 6999 was campaigning in favour of an independent candidate by rising slogans in the mike as "we will win the Vilancode constituency and laid it under the foot of President Raghul Gandhi" and "All the leaders and cadres of Congress party have decided and asked me to stand in this election". Similarly, they have also displayed the notices



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and leaders of Indian National Congress as if he is a congress candidate.

Suspecting that it may leads to law and order problem, a case has been registered under Sections 188 of IPC and 127A(1) of the Representation of People Act, 1951.

3. Learned counsel for the petitioner submits that even if the contents of FIR are accepted to be true, there is no offence against him and that the charge sheet should have been filed within one year as per Sectin 468 of Cr.P.C. thereby taking cognizance is incorrect.

4. Section 188 of IPC runs as under:-

"Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;



and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both. "

5. In order to prove the offence under Section 188 of IPC, the prosecution has to prove that the public servant has promulgated prohibitory orders and that the petitioner knowing about promulgation of such prohibitory orders has intentionally violated the prohibitory orders. In respect of Section 188 of IPC is concerned, a person who has committed offence under Section 188 of IPC, sentence for the said offence would be imprisonment for a term which may extend to one month or fine which may extend to Rs.200/- or both.

6. Section 127A(1) of the Representation of People Act, 1951, runs as under:-

"[127A. Restrictions on the printing of pamphlets, posters, etc.—(1) No person shall print or publish, or cause to be printed or published, any election pamphlet or poster which does not bear on its face the names and addresses of



the printer and the publisher thereof.

(2) No person shall print or cause to be printed any election pamphlet or poster—

(a) unless a declaration as to the identity of the publisher thereof, signed by him and attested by two persons to whom he is personally known, is delivered by him to the printer in duplicate; and

(b) unless, within a reasonable time after the printing of the document, one copy of the declaration is sent by the printer, together with one copy of the document,—

(i) where it is printed in the capital of the State, to the Chief Electoral Officer, and

(ii) in any other case, to the district magistrate of the district in which it is printed.

(3) For the purposes of this section,— (a) any process for multiplying copies of a document, other than copying it by hand, shall be deemed to be printing and the expression “printer” shall be construed accordingly; and

(b) “election pamphlet or poster” means any printed pamphlet, hand-bill or other document distributed for the purpose of promoting or prejudicing the election of a candidate or group of candidates or any placard or poster having reference to an election, but does not include any handbill, placard or poster merely announcing the date, time, place and other particulars of an election meeting or routine instructions to election agents or workers.

(4) Any person who contravenes any of the provisions of



sub-section (1) or sub-section (2) shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.] "

7. As per Section 127A(1) of the Representation of People Act, no person shall print or publish or cause to be printed or published any election pamphlet or poster which does not bear on its face the names and addresses of the printer and the publisher thereof. In case if any person violates the said rules, he will be charged for the offence with the imprisonment for a term which may extend to six months of with fine which may extend up to Rs.2000/- or with both.

8. Section 468 of Cr.P.C. runs as under:-

"468. Bar to taking cognizance after lapse of the period of limitation.—

(1) Except as otherwise provided elsewhere in this Code, no Court shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be— (a) six months, if the offence is punishable with fine only;



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(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. "

9. In view of the above, as per Section 468(2)(a), the charge sheet should have been filed in respect of above two offences within a period of one year. The offences took place on 28.03.2021 and charge sheet was filed on 04.11.2022, i.e. after a lapse of more than one year 9 months. further the prosecution has not filed any application under Section 473 of Cr.P.C. seeking to condone the delay explaining the reason and learned Magistrate has not also condoned the delay. Once the delay has not been condoned taking cognizance of these offences beyond the period of limitation is not valid under Section 468 of Cr.P.C. thereby the charge sheet is to be quashed on this count alone.

10. Insofar as Section 188 of IPC is concerned, the complaint is filed by one Arichandran. In order to prove the case, the prosecution is required to prove that the accused has committed disobedience of the orders promulgated by a public servant. Here what all allegations are



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made against the petitioner are that the petitioner has been canvassing in favour of independent candidate stating that as if he is the candidate from the Indian National Congress and that he has spoken in Public Address System as "we will win the Vilancode constituency and laid it under the foot of President Raghul Gandhi" and "All the leaders and cadres of Congress party have decided and asked me to stand in this election". Nothing is mentioned as to what are the prohibitory orders promulgated and by whom and what is the violation committed by the petitioner. If at all any prohibitory orders have been promulgated, the person who has promulgated the orders should file complaint before the respondent police. Admittedly, in the present case, the complainant is the Sub-Registrar who is a member of the flying squad and he has not promulgated any prohibitory orders. Therefore, even on merits, there is no case against the petitioner.

11. In the result, this Criminal Original Petition is allowed and the entire proceedings in STC No.1395 of 2022 pending on the file of the learned Judicial Magistrate No.1, Kuzithurai are hereby quashed. Consequently, connected miscellaneous petitions are closed.



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26.09.2023

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

PKN/mvs.

To

1. The Inspector of Police,
Marthandam Police Station,
Kanyakumari District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN,J

PKN/mvs.

Pre-delivery order made in
Crl.O.P.(MD)No.14708 of 2023

Dated: 26.09.2023