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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 18/10/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

Cr1.OP (MD) No.18662 of 2023

and

Cr1.MP (MD) Nos.14825 and 14827 of 2023

1.S.P.Loganathan
2.N.S.Veerassamy
3.Ponsaravanan
4.D.Senthil
5.Bank S.Dhandapani
6.S.M.L.Ravichandran
7.Nanthakumar
8.R.R.Gunasekaran
9.R.Prabakaran
10.N.Durai Raj
11.A.P.Subramani
12.C.K.Kittusamy
13.R.Vadivel
14.M.R.Senthilkumar
15.S.Subramani : Petitioners/A1 to A15

Vs.

1.State rep. by
The Inspector of Police,
Chinnatharapuram Police Station,
Karur District.
(Crime No.167 of 2015) : R1/Complainant

2.N.Murugan,
Special Sub Inspector of Police,
Chinnatharapuram Police Station,
Karur District. : R2/De-facto Complainant



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PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in STC No.8 of 2019 on the file of the District Munsif-cum-Judicial Magistrate, Aravakuruchi and to quash the same and pass such further or other orders.

For Petitioners : Mr.R.Mathiyalagan

For Respondents : Mr.M.Vaikkam Karunanithi
Government Advocate
(Criminal side)

O R D E R

This criminal original petition has been filed seeking quashment of the case in STC No.8 of 2019 on the file of the District Munsif-cum-Judicial Magistrate, Aravakuruchi.

2.The case of the prosecution in brief:-

The de-facto complainant lodged a complaint stating that on 20/08/2015 at about 03.40 pm, when he was on routine duty near Chinnatharapuram Church, the petitioners along with others gathered, raised slogans against a particular political party leader and burned his picture, thereby causing disturbance to the public.



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Upon which, a case in Crime No.167 of 2015 was registered for the offences under sections 143, 188 and 285 IPC. After completing the formalities of investigation, charge sheet was filed and it was taken cognizance in STC No.8 of 2019 by the District Munsif-cum-Judicial Magistrate, Aravakuruchi.

3. Seeking quashment of the same, this petition has been filed by the petitioners on the ground that none of the allegations mentioned either in the FIR or charge sheet attract any of the ingredients of the offences alleged against them.

4. Heard both sides.

5. For attracting the offence under section 143 IPC, the ingredients of section 141 IPC must be fulfilled.

6. Section 141 IPC reads as under:-

"Section 141. Unlawful assembly.-

An assembly of five or more persons is designated an "unlawful assembly:, if



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the common object of the persons composing that assembly is-

First-To overawe by criminal force, or show of criminal force, or any public servant in the exercise of the lawful power of such public servant; or

Second-To resist the execution of any law, or of any legal process; or

Third.-To commit any mischief or criminal trespass, or other offence; or

Fourth.-By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right: or

Fifth.-By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.



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Explanation.-An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly."

7. When we apply the ingredients to the factual position of the case, it is seen that none of the ingredients mentioned in 141 IPC get attracted. They have simply made protest against a particular political party leader in a peaceful manner. It is a democratic right of every person to raise voice against the political or Government demanding legal action. Such a right has been exercised by the petitioners along with others. So, that cannot be construed as 'unlawful or illegal'.

8. Section 188 IPC reads as under:-

"188. Disobedience to order duly promulgated by public servant.-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 directions,



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shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extent to one month, or with fine which may extend to two handed 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 extent to one thousand rupees, or with both.

Explanation.-It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

9. Section 195 Cr.P.C is a bar to the police to register the FIR and investigate the matter in respect of



section 188 of IPC and file a report under section 173 of Cr.P.C. Section 195 of Cr.P.C stipulates that no court shall take cognizance of any of the offences under sections 172 to 188 (both inclusive) of the IPC, except on the complaint in writing of the public servant concerned or some of the public servant to whom he is administratively subordinate.

10.A Division Bench of this Court, in the decision reported in 2015-3- L.W.-528 [[A.Santhos Yadav v. The Bar Council of Tamil Nadu and others](#)], has held that mere burning of an effigy by itself would not amount to an offence, unless it is proved that such a burning was likely to cause hurt or injury to any other person. For better appreciation, the relevant portion from the said decision is extracted hereunder:-

"9.A careful reading of Section 285 would show that mere burning of an effigy by itself, is not made a punishable offence under the [IPC](#). In fact, there is not even a reference in [Section 285, IPC](#) to the burning of effigies. [Section 285](#) is actually inserted in Chapter XIV of the [IPC](#), which deals with offences affecting public



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health, safety, convenience, decency and morals. [Section 285](#) itself is grouped along with offences dealing with negligence. The manner in which [Section 285](#) is worded would show that doing anything with fire or any combustible matter any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to an other person, is made punishable. Therefore, acting rashly or negligently so as to endanger human life or in the manner likely to cause hurt or injury, is a sine qua non for making an act come within the meaning of [Section 285](#)."

11. Since there is no provision in the [IPC](#), which makes the burning of effigies a punishable offence, the police invariably charge persons, who burn effigies, only for an offence under [Section 285](#) or at the most under [Section 286](#).

12. In the case on hand, the petitioners along with others said to have burnt the picture of a political party and there is no material to show that the act of the petitioners in burning the picture was likely to



cause hurt or injury to any other person and they have acted in a rash and negligent manner, so as to endanger human life. Therefore, in the light of the aforesaid dictum laid down by a Division Bench of this Court, this Court is of the view that the offence under [Section 285](#) IPC would not lie.

13. For the reasons stated above, this court is of the considered view that the entire prosecution is bad in law.

14. In the result, this criminal original petition is **allowed**. The case in STC No.8 of 2019 on the file of the District Munsif-cum-Judicial Magistrate, Aravakuruchi, is hereby quashed as against the petitioners. Consequently, connected Miscellaneous Petitions are closed.

18/10/2023

Index: Yes/No
Internet: Yes/No

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To,

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- 1.The District Munsif-cum-Judicial Magistrate,
Aravakuruchi,
Karur District.
- 2.The Inspector of Police,
Chinnatharapuram Police Station,
Karur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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