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CrI.O.P.(MD)No.2449 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.01.2024**

CORAM:

THE HONOURABLE MR.JUSTICE **M.DHANDAPANI**

CrI.O.P.(MD) No.2449 of 2022

and

CrI.M.P.(MD).No.1805 of 2022

1.Selvam

2.Ravichandran

3.Ilanchelizhan

4.Prem Kumar

5.Vasu

6.Prabhu

... Petitioners/Accused Nos.1 to 6

Vs.

1.State represented by
the Inspector of Police,
Othakadai Police Station,
Madurai District.
(Crime No.671 of 2021)

2.Karthikeyan

...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the First Information Report in Crime No.671 of 2021 pending on the file of the first respondent and quash the same as illegal.

For petitioners

: Mr.A.Naresh Prabu

For R-1

: Mr.B.Nambiselvan,
Additional Public Prosecutor



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ORDER

This petition has been filed seeking to quash the First Information Report in Crime No.671 of 2021 pending on the file of the first respondent.

2. The case of the prosecution is that due to dispute between the petitioners / Accused Nos.1 to 6 and some other villages with regard to the pathway to carry the dead body to the burial ground, the second respondent / *defacto* complainant, who is the Village Administrative Officer, made a complaint before the first respondent Police and the respondent Police registered a case in Crime No.671 of 2021 for the alleged offence punishable under Sections 153A and 505(1)(c) of I.P.C.

3. The learned counsel appearing for the petitioners would submit that the petitioners are the local residents of Rajakoor area. He would further submit that the petitioners were unable to bury the dead body due to pathway dispute between the petitioners and some other villagers in the same area. He would further submit that on 24.12.2021, one Aathan died in the petitioners' Village and when the people of that area was taking his body through the aforesaid pathway to bury the dead



body, some of the villagers made agitation, thereby, the second accused suddenly dig a burial ground near the people residential area to bury the body. Due to which, the second respondent made a complaint before the first respondent Police and the first respondent Police registered a case against the petitioners. He would further submit that the main ingredients required under Sections 153A and 505(1)(c) of I.P.C., were not satisfied and *mens rea* is a necessary ingredient for the offence under Section 153A of I.P.C and equally *mens rea* is necessary to postulate for the offence under Section 505(2) IPC also as could be discerned from the words “with an intent to create or promote or which is likely to create or promote” as used in that Sub Section. The main distinction between the two offences is that the publication of the word or representation is not necessary under the former, such publication is the *sine qua non* of the offence under Section 505 IPC and further the common feature in both Section i.e., Sections 153A and 505(1)(c) of I.P.C., being promotion of feeling of enmity, hatred or ill-will between different religious or racial or language or regional groups or castes and communities, it is necessary that atleast two such groups or communities should be involved. Merely inciting the felling of one community or group without any reference to any other community or group cannot attract either of the two Sections.

In the present case except the petitioners’ community people, no other



community people were involved for promoting the ill-hatred features between the two community groups. In the absence of necessary ingredient required under Sections 153(A) and 505(1)(c) IPC, the respondent Police registered the case for the offence under Sections 153A and 505(1)(c) and it is not sustainable, accordingly, he prays for allowing this petition.

4. The learned Additional Public Prosecutor appearing for the respondent Police would submit that the petitioners are intentionally creating law and order problem between the two groups in the Village, as if one group prevented the petitioners to bury the dead body in the burial ground, for which, they created social unleashed in the locality. Thereby, the respondent Police registered the case against the petitioners and he would further submit that the investigation is at the initial stage and accordingly, he prays for dismissal of this petition.

5. Admittedly, there is a pathway dispute between the petitioners and the villagers. On 24.12.2021, one Aathan died and when the people of that area was taking his body through the aforesaid pathway to bury the dead body, some of the villagers made agitation, thereby, the second accused suddenly dig the burial ground near the



residential area, due to which, the respondent Police registered a complaint against the petitioners. Though the Village Administrative Officer made a complaint before the respondent Police stating that one of the persons, namely, A-5, has instigated the other petitioners to bury the dead body, the fact remains that the body was not buried in the residential area and it was buried only in the burial ground. The respondent Police registered a case under Sections 153A and 505(1)(c) of I.P.C. For ready reference, the relevant Sections are extracted hereunder:

“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 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



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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.

505. Statements conducing to public mischief—

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



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(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; or

(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; or

(c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community;

shall be punished with imprisonment which may extend to three years, or with fine, or with both.”

6. In the present case, only the petitioners' community people made dharna in the respective place to bury the body and there are no two groups involved. The common feature in both Sections i.e., 153A and 505(1)(c) of I.P.C for being a promotion of feeling of enmity, hatred or ill-will between different religious or racial or language or regional groups or castes and communities, it is necessary that atleast two such groups/communities should involve. Merely inciting the feeling of one



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community or group, without any reference to other community/group cannot attract either of the two sections.

7. Coming to the present case on hand, there is no enmity between two groups. The petitioners alone made dharna to carry the dead body to bury, for which, the respondent Police registered a case against the petitioners. Hence, this Court is inclined to quash the First Information Report in Crime No.671 of 2021 pending on the file of the first respondent insofar as the petitioners are concerned.

8. Accordingly, the Criminal Original Petition stands allowed. Consequently, the connected miscellaneous petition is closed.

30.01.2024

Index : Yes/No

Internet : Yes/No

TSG

To

1.The Inspector of Police,
Othakadai Police Station,
Madurai District.

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



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M.DHANDAPANI. J.

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