



Crl.O.P.(MD)No.12864 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.03.2024

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.(MD)No.12864 of 2022
and
Crl.M.P.(MD)No.8156 of 2022

1.Senthil

2.Anbuselvan

... Petitioners

Vs.

1.The State Rep.by
The Inspector of Police,
Panaiyapatti Police Station,
Pudukkottai District.
(Crime No.37 of 2019)

2.Sethupathi

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings in C.C.No.149 of 2022 on the file of the District Munsif cum Judicial Magistrate, Thirumayam, Pudukkottai District.

For Petitioners : Mr.D.Rameshkumar



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For R1 : Mr.P.Kottaichamy,
Government Advocate (CrI. Side)

For R2 : No Appearance

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.149 of 2022 on the file of the learned District Munsif cum Judicial Magistrate, Thirumayam, Pudukkottai District.

2.The case of the prosecution is that the second respondent herein is working as Divisional Engineer at Highways Department and the petitioners herein are also working in the same Department. In order to defame the Government, the accused persons had spread Whatsapp messages by stating that the side wall of the bridge situated at Namanasamuthiram to Ponnamaravathi Road, was constructed without cement. Hence, the second respondent filed a complaint before the first respondent, based on which, FIR in Cr.No.37 of 2019 came to be registered. Upon completion of investigation, the first respondent filed



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final report for the offence punishable under Section 505(1)(b) IPC, which was taken cognizance by the learned District Munsif cum Judicial Magistrate, Thirumayam, Pudukkottai District in in C.C.No.149 of 2022. Challenging the same, the present petition has been filed.

3.The learned counsel appearing for the petitioners submitted that for initiating proceedings under Section 505(1)(b) IPC, prior sanction is required as per Section 196 Cr.P.C. In the present case, no such sanction was obtained by the first respondent Police, which is fatal to the prosecution. He further submitted that on the very same ground, this Court quashed the charge sheet vide order made in Crl.O.P.(MD)No. 11832 of 2021 dated 04.10.2021. Accordingly, he prayed to quash the impugned proceedings.

4.The learned Government Advocate(Crl.side) appearing for the first respondent fairly admitted that no sanction was obtained.

5.This Court, vide order made in Crl.O.P.(MD)No.11832 of 2021 dated 04.10.2021 has held as follows:



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5. Section 196 Cr.P.C reads as under:

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

(1A) No Court shall take cognizance of—

(a) any offence punishable under section 153B or sub-section (2) or sub-section (3) of section 505 of the Indian Penal Code (45 of 1860), or

(b) a criminal conspiracy to commit such offence, except with the previous sanction of the Central Government or of the State Government or of the District Magistrate

(2) No Court shall take cognizance of the offence of any criminal conspiracy punishable under section 120B of the Indian Penal Code (45 of 1860), other than a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, unless the State Government or the District Magistrate has consented in writing to the initiation of the proceeding: Provided that where the criminal conspiracy is one to which the provisions of section 195 apply, no such consent shall be necessary

(3) The Central Government or the State Government may,



before according sanction under subsection (1) or sub-section (1A) and the District Magistrate may, before according sanction under sub-section (1A) and the State Government or the District Magistrate may, before giving consent under sub-section (2), order a preliminary investigation by a police officer not being below the rank of Inspector, in which case such police officer shall have the powers referred to in subsection (3) of section 155.

6.A combined reading of those two provisions would show that the offence under Section 505(1)(b) IPC requires prior sanction by the Government and investigation can be taken only upon the order passed by the competent authority. Here absolutely there is no such procedure that has been adopted by the Inquiry Officer. Based upon the information given by the second respondent, who is also police officer, the case has been registered and final report has also been filed. So this is nothing but illegal.

7.Even if we go through the contents of the First Information Report as well as the final report, it is seen that the petitioner shouted slogans protesting against the policies of the Government. So this is no way involved in the criminal offence promoting the feeling of enmity or hatred or ill-will between different religious, racial, language and communities.

8.A reading of the complaint as well as the nature of the protest that has been undertaken by the petitioner



cannot be termed as illegal assembly and protest is guaranteed right under Constitution of India. However, they ought to have sought permission from the competent authority before staging protest but it is not the case of the prosecution that they did not get any permission before staging protest. It is also seen that they issued pamphlets criticizing the Government about its policy. So this is no way involved in breach of peace or inciting violence among the public. The police however would have warned the people to disperse or atleast they would have been arrest under Section 41 Crl.P.C to prevent them from causing further nuisance to the public instead of that they have registered a case and laid a final report also which may not be appropriate.

9. Similarly, the other offences under Section 353 IPC is concerned, mere shouting of slogans and issuance of pamphlets will not amount to preventing the public officers from discharging their official duty. Here, Section 353 IPC is also not attracted. Similarly, the offence under Section 506(i) IPC is also not attracted because mere verbal utterances will not attract the offence under Section 506(i) IPC. More over vague allegations have been made with regard to criminal intimidation and exaggerated version has been given by the defacto complainant about the occurrence. As I stated earlier, no doubt they did not get proper permission to



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stage protest in a public place from the competent authority. The police ought to have, as I mentioned earlier, asked the petitioner to disperse or to take action under Section 41 Cr.P.C, but without resorting to the lawful means, registration of the First Information Report and filing of final report with exaggerated version is illegal . Moreover I am of the considered view that the continuation of the proceedings may amount to abuse of court and law. On that ground, the proceedings in C.C.No.146 of 2019 pending before the Learned Judicial Magistrate No.1, Karur is liable to be quashed and the same is quashed.

6.The above said decision is squarely applicable for the present case on hand. Accordingly, the impugned proceedings in C.C.No.149 of 2022 pending on the file of the learned District Munsif cum Judicial Magistrate, Thirumayam, Pudukkottai District is hereby quashed and this criminal original petition is allowed. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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M.DHANDAPANI,J.

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To

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

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