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Crl.O.P.No.8489 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.03.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.8489 of 2023
and Crl.M.P.Nos.5395 & 5397 of 2023

1. Abdul Rahman
2. Prasadh
3. Y.George Williams
4. Rajarajan
5. Dinesh @ Infant Dinesh
6. Muthuramalingam
7. Antony @ Antony Jyothi Sheeran
8. Kayalvizhi

.... Petitioners

VS.

1. State of Tamil nadu
rep.by
The Inspector of Police,
B4, High Court Police Station,
Chennai 600 104.
2. The Senior Commandant
CSIF High Court, Chennai 600 104.

.... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C. to call for the records pertaining to C.C.No.5724 of 2022 pending on the file of Chief Metropolitan Magistrate, Egmore, Chennai and quash the same in respect of all the petitioners.



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For Petitioners : Mr.Johnsathyan
Senior Counsel

For R1 : Mr.A.Gopinath
Govt.Advocate

For R2 : Mr.K.Ramanamoorthy
Central Govt.Counsel

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No. 5724 of 2022 pending on the file of Chief Metropolitan Magistrate, Egmore, Chennai thereby having been taken cognizance for the offences under Sections 143, 186, 188, 189, 294(b), 341, 353, 506(i) & 509 of IPC & Section 3 of the Tamil Nadu Public Property Desertion Act, 1992.

2. It is the case of the petitioners that on 20.11.2015 , the 1st accused is said to have protested stating that one male CISF Personnel in civil dress has video graphed a lady advocate when she was being frisked in the booth. It is further alleged that at 4.00 p.m. on the same day, the group of advocates is said to have assembled and scolded the CISF



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Personnel with unparliamentary words.

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3. It is the further case of the petitioners that totally there are 9 accused and the petitioners arrayed as A1 to A5, A7 to A9. As per the complaint, the occurrence alleged said to have taken place on 20.11.2015, but the second respondent lodged the complaint only on 22.11.2015. There is no explanation by the second respondent for the delay in lodging the complaint. After the period of seven years from the date of registration of F.I.R, the first respondent filed final report before the learned Chief Metropolitan Magistrate, Egmore, Chennai. Based on the said complaint, the disciplinary proceedings were initiated by the Bar Council of Tamilnadu and Puducherry as against the accused for professional misconduct and subsequently transferred to the Special Disciplinary Committee, Bar Council of Karnataka. Ultimately, the Special Disciplinary Committee, Bar Council State of Karnataka passed final order dated 20.11.2016 holding that the petitioners herein guilty of professional misconduct and suspended them from practice as advocate for a period of one year from the date of order. Aggrieved by the same,



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the petitioners have preferred an appeal in D.C.Nos.87 of 2026 & etc batch, before the Bar Counsel of India. Pursuant to the same, the Bar Council of India vide order dated 14.04.2018 to set aside the order passed by the Special Disciplinary Committee, Karnataka State of Bar Council. The relevant portion of the said order passed by the Disciplinary Committee of the Bar Council of India, is extracted hereunder :-

“ The whole basis for initiation of proceedings against the appellants is the complaint submitted by the Senior Commandant (CISF) which is marked as Exhibit C-2. This discloses that the Senior Commandant was very much at the place of occurrence and it was after his persuasion, that the group of advocates have disbursed. Even in the complaint, it was not mentioned that any serious criminal acts have taken place. In fact, the complaint is filed on the basis of apprehensions; and the same is evident from the concluding paragraph of Ex.C2, which reads as follows:-

“ There is a strong apprehension that if appropriate pre-emptive actions are not taken against the below mentioned personnel they would be further emboldened to create more serious problems”

We are yet to come across a system of law,



where a person can be punished just on the basis of apprehension. Keeping aside the aspects mentioned above, it is fairly clear that the entire incident occurred on account of a sensitive issue. A lady advocate is said to have been video graphed by a male officer, in the course of frisking. The complaint, Ex.C2 runs into three typed pages. Nowhere it is mentioned that the person who is said to have been video of the lady advocate has been examined by the senior officers, to find out the truth, or his phone was verified.

For all practical purposes, the allegations as to video graphing remained unrebutted. The appellants, if all, have protested, not on account of any inconvenience to them but against the acts of indignity towards their lady colleague. They were said to have been pacified when a lady sub-inspector examined as CW4 narrated the procedure and convinced them that nothing objectionable has taken place.

Even according to the complaint, all the appellants have disbursed, after Senior Commandant persuaded them. It is just un-understandable as to how the appellants can be said to have resorted to acts of professional misconduct. The allegation that they have used abusive words against the officials of the C.I.S.F and some judges was not proved, through any independent and acceptable evidence.

Another important aspect of the matter is that the criminal case which was instituted on the very same set of allegations is still pending.

Viewed from any angle, we find it difficult to sustain the findings recorded by the Disciplinary



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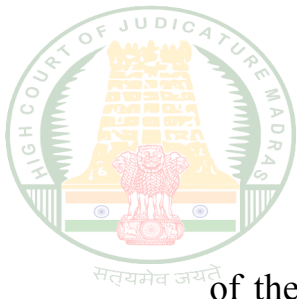
Committee of the State Bar Council of Karnataka. The appellants have been put to inconvenience and hardship of being prevented from practicing almost for 8 months as against the punishment of suspension for a period of one year.

We therefore, allow the appeals filed by the appellants and set aside the common order dated 20.11.2016 passed by the Special Disciplinary Committee of the State Bar Council of State of Karnataka constituted by the Bar Council of India. There shall be no order as to costs”.

Aggrieved by the order dated 14.04.2018 in D.C.Appeal No.87 of 2016 and etc batch, the first respondent has filed final report before the Metropolitan Magistrate, Egmore, Chennai thereby having been taken cognizance for the offences under Sections 143, 186, 188, 189, 294(b), 341, 353, 506(i) & 509 of IPC & Section 3 of the Tamil Nadu Public Property Desertion Act, 1992. Challenging, the same, the petitioners have come forward with the present criminal original petition.

4. Heard the learned counsel on either side and perused the materials available on record.

5. On perusal of the order passed by the Disciplinary Committee



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of the Bar Council of India, it is clear that the petitioners had protested not on account of any inconvenience to them but against the acts of indignity towards their lady colleague. When lady advocate was being frisked in the Booth by a CISF personnel, as such it was questioned by all the other advocates. That apart, all the accused persons had suffered seven months of suspension of their practice as advocates.

6. The only question for consideration is that whether the registration of case under Sections 188 and 353 of IPC, registered by the respondent is permissible under law or not? In this regard it is relevant to extract Section 195(1)(a) of the Criminal Procedure Code, 1973 :-

“195.Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. (1) No Courts shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive)of the Indian Penal Code (45 of 1860), or

(ii)of any abetment of, attempt to commit, such offence, or



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(iii) of any criminal conspiracy to commit, such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;...”

Therefore, it is very clear that for taking cognizance of the offences under Section 188 of IPC, the public servant should lodge a complaint in writing and other than that no Court has power to take cognizance.

7. The learned counsel for the petitioners relied upon a judgment in ***Mahaboob Basha Vs. Sambanda Reddiar and others*** reported in ***1994(1) Crimes, Page 477***. He also relied upon a judgment in a batch of quash petitions, reported in ***2018-2-L.W. (Crl.) 606*** in ***Crl.O.P. (MD)No. 1356 of 2018***, dated 20.09.2018 in the case of ***Jeevanandham and others Vs. State rep. by the Inspector of Police, Karur District***, and this Court held in Paragraph-25, as follows :-

"25.In view of the discussions, the following guidelines are issued insofar as an offence under



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Section 188 of IPC, is concerned:

a) A Police Officer cannot register an FIR for any of the offences falling under Section 172 to 188 of IPC.

b) A Police Officer by virtue of the powers conferred under Section 41 of Cr.P.C will have the authority to take action under Section 41 of Cr.P.C., when a cognizable offence under Section 188 IPC is committed in his presence or where such action is required, to prevent such person from committing an offence under Section 188 of IPC.

c) The role of the Police Officer will be confined only to the preventive action as stipulated under Section 41 of Cr.P.C and immediately thereafter, he has to inform about the same to the public servant concerned/authorised, to enable such public servant to give a complaint in writing before the jurisdictional Magistrate, who shall take cognizance of such complaint on being prima facie satisfied with the requirements of Section 188 of IPC.

d) In order to attract the provisions of Section 188 of IPC, the written complaint of the



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public servant concerned should reflect the following ingredients namely;

i) that there must be an order promulgated by the public servant;

ii) that such public servant is lawfully empowered to promulgate it;

iii) that the person with knowledge of such order and being directed by such order to abstain from doing certain act or to take certain order with certain property in his possession and under his management, has disobeyed;

and

iv) that such disobedience causes or tends to cause;

(a) obstruction, annoyance or risk of it to any person lawfully employed; or

(b) danger to human life, health or safety;

or (c) a riot or affray.

e) The promulgation issued under Section 30(2) of the Police Act, 1861, must satisfy the test of reasonableness and can only be in the nature of a regulatory power and not a blanket power to trifle any democratic dissent of the citizens by the Police.



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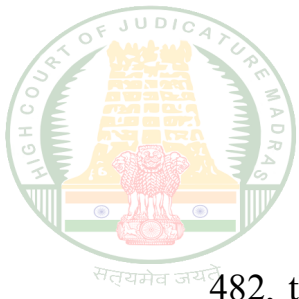
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f) The promulgation through which, the order is made known must be by something done openly and in public and private information will not be a promulgation. The order must be notified or published by beat of drum or in a Gazette or published in a newspaper with a wide circulation.

g) No Judicial Magistrate should take cognizance of a Final Report when it reflects an offence under Section 172 to 188 of IPC. An FIR or a Final Report will not become void ab initio insofar as offences other than Section 172 to 188 of IPC and a Final Report can be taken cognizance by the Magistrate insofar as offences not covered under Section 195(1)(a)(i) of Cr.P.C.

h) The Director General of Police, Chennai and Inspector General of the various Zones are directed to immediately formulate a process by specifically empowering public servants dealing with for an offence under Section 188 of IPC to ensure that there is no delay in filing a written complaint by the public servants concerned under Section 195(1)(a)(i) of Cr.P.C.

8. It is to be noted that while exercising the power under Section



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482, the Court should be slow, at the same time, if the Court finds that from the entire materials collected by the prosecution taken as a whole, would not constitute any offence, in such situation, directing the parties to undergo ordeal of trial will be a futile exercise and it will infringe the right of the persons and in this regard, the Apex Court in ***State of Haryana and others Vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) Supreme Court Cases 335***, has been held as follows : -

“.....

(a) *where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;*

(b) *where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;*

(c) *where the uncontroverted allegations made in the FIR or -complaint and the evidence collected in support of the same do not disclose the commission of*



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any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”



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9. It is also relevant to note the definition of Unlawful Assembly:

“Unlawful Assembly-

An assembly of five or more persons is designated an ?unlawful assembly?, if the common object of the persons composing that assembly is -

(i) to overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

(ii) to resist the execution of any law, or of any legal process; or

(iii) to commit any mischief or criminal trespass, or other offence; or

(iv) 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



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(v) 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.-

10. Only when the assembly fit into any of the above circumstances, it could be construed as unlawful. The accused had not shown any criminal force to commit any mischief, crime or any offence or by way of criminal force or tried to take possession of the property or right to use of incorporeal right which is in possession of enjoyment of others or rights.

11. To attract the offences under Section 294(b) of IPC, there must be an uttering of words to affect the person who lodged the complaint. In this regard it is relevant to extract the Section 294(b) of IPC, as follows :-

"294. Obscene acts and songs —Whoever, to the annoyance of others— (a) does any obscene act in any public place, or (b) sings, recites or utters



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any obscene song, ballad or words, in or near any public place, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine, or with both."

12. Admittedly, there is absolutely no words uttered by the petitioners as such to constitute the offence under Section 294(b) of IPC, there is no averments and allegations. Further the charges do not show that on hearing the obscene words, which were allegedly uttered by the petitioners, the witnesses felt annoyed. No one has spoken about the obscene words, they felt annoyed and in the absence of legal evidence to show that the words uttered by the petitioners annoyed others, it cannot be said that the ingredients of the offence under Section 294(b) of IPC is made out. It is relevant to rely upon the judgment reported in **1996(1) CTC 470** in the case of **K.Jeyaramanuju Vs. Janakaraj & anr.**, which held as follows :-

"To prove the offence under Section 294 of IPC mere utterance of obscene words are not sufficient but there must be a further proof to



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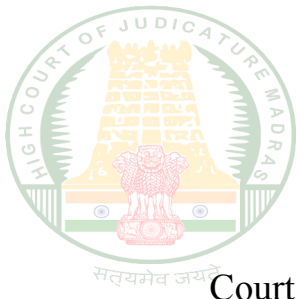
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*establish that it was to the annoyance of others,
which is lacking in the case."*

The above judgment is squarely applicable to the present case and therefore, the offence under Section 294(b) of IPC is not at all attracted as against the petitioners.

13. Insofar as the offence under Section 506(i) of I.P.C is concerned, to attract the offence, threat and intention to cause an alarm are main ingredients. The third ingredient is that the intention must be to cause any person to do any act which he is not legally bound to do or to omit to do any act which that person is legally entitled to do, subsequent to the main ingredients. Whereas in the case on hand, even according to the case of the prosecution, the alleged threats issued by the petitioners were only empty threats and they had no effect on the complainant.

14. In this regard, It is relevant to rely upon the judgment of this



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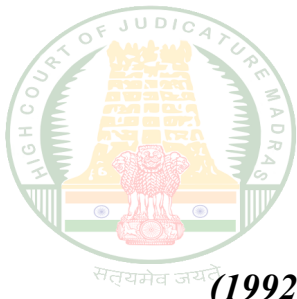
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Court made in **Crl.O.P.(MD)No.11030 of 2014** in the case of **Abdul Agis**

Vs. State through the Inspector of Police, which reads as follows:-

“7.It is seen from the statements recorded under Section 161(3) of Cr.P.C. of the second respondent/ defacto complainant that it does not contain any obscene words, which were uttered by the petitioner herein and the entire allegations are very simple in nature. It is also seen from the statement of one Uthami, that the petitioner threatened the defacto complainant with dire consequences when he dashed the defacto complainant. The entire allegations are trivial in nature. Further, to attract the offence under Section 506(i) of I.P.C., there was a threatening only by words. As pointed by the learned counsel appearing for the petitioner, the threat should be a real one and not just a mere word when the petition uttering does not exactly mean what he says and also when the person to whom threat is launched does not feel threatened actually. Therefore, the offences under Sections 294(b) and 506(i) of I.P.C. are not made out as against the petitioner herein and also the entire criminal proceedings is clear an abuse of process of Court. Therefore, this Court is inclined to quash the entire proceedings.”

15. In this regard, it is relevant to extract the judgement reported in



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(1992) SCC Crl. 426 in the case of **Bajanlal v. State of Haryana**,

wherein the Hon'ble Supreme Court of India has listed out the following category of case in which the criminal proceedings can be quashed using the inherent jurisdiction of the High Court under Section 482 Cr.P.C.:

"102.....

.....

7. Where a criminal proceeding is manifestly attended with malafide and/or where the proceedings is maliciously instituted with an ulterior motive for wrecking vengeance on the accused and with a view to spite him due to private and personal grudge."

Therefore, the impugned complaint is nothing but clear abuse of process of law and it cannot be sustained as against the petitioners.

16. In view of the above, no case has been made out as against



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the petitioners to proceed with the trial. Therefore, the impugned order cannot be sustained and is liable to be quashed. Accordingly, the final report in C.C.No.5724 of 2022 on the file of the Judicial Magistrate I, Tirupattur, is hereby quashed.

17. In the result, this Criminal Original Petition stands allowed.
Consequently, connected Miscellaneous petitions are closed.

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Neutral citation : Yes/No
Speaking/non-speaking order
kkd

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1. The Inspector of Police,
B4, High Court Police Station,
Chennai 600 104.
2. The Senior Commandant
CSIF High Court, Chennai 600 104.
3. The Chief Metropolitan Magistrate,
Egmore, Chennai.
4. The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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