



Crl.O.P.(MD)No.109 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.01.2025

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.109 of 2025

and

Crl.M.P.(MD)Nos.90 and 91 of 2025

Kannan

... Petitioner

Vs.

1.The State of Tamil Nadu, Rep. by
The Sub Inspector of Police,
Virudhunagar Bazaar Police Station,
Virudhunagar District.
(Crime No.27 of 2021)

2.Mohanraj,
Survey and Statistical Inspector,
District Industries Centre,
District Collectorate Campus,
Virudhunagar Taluk,
Virudhunagar District.

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of the B.N.S.S., to call for the records relating to the proceedings of charge sheet in S.T.C.No.1543 of 2023, pending before the Judicial Magistrate Court No.I, Virudhunagar and quash the same insofar as the petitioner / accused herein.



WEB COPY



Crl.O.P.(MD)No.109 of 2025

For Petitioner : Mr.G.Mariappan

For R1 : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

The petitioner, who is arrayed as an accused in S.T.C.No.1543 of 2023, pending before the Judicial Magistrate Court No.I, Virudhunagar, facing trial for offences under Section 4A(1a) and 4(B) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959 (hereinafter referred to as 'the Act'), has filed this quash petition.

2. The case against the petitioner is that on 26.03.2021, at around 12:30 p.m., the petitioner is said to have removed the cloth covering placed on the statue of Dr.M.G.Ramachandran by the election authorities during the election period, thereby exposing the statue. This act allegedly drew attention to the figure of the late leader, benefiting the petitioner's political party. Hence, a case was registered based on the complaint of the second respondent / de-facto complainant, who was part of the election squad.



Crl.O.P.(MD)No.109 of 2025

WEB COPY

3. The contention of the learned counsel for the petitioner is that the case is not maintainable because, under the Act, it is the property owner or the person in control of the property who must lodge a complaint regarding any disfigurement. The election flying squad is not the owner of the property, and it is neither the municipal authorities nor the political party to which the statue belongs that has lodged the complaint.

4. The learned counsel for the petitioner further submitted that the case was registered on 26.03.2021, and the investigation was completed on 14.06.2021. However, the final report was filed before the Magistrate on 04.11.2022, with a delay of one year and four months. Since the maximum punishment for the offence is one year and a fine of Rs.5,000, the case is barred by limitation.

5. The learned counsel further submits that the learned Judicial Magistrate No.I, Virudhunagar, while taking the complaint on file, applied his mind mechanically, resulting in a rubber stamp order, which has been deprecated by this Court in several cases. Before taking a



Crl.O.P.(MD)No.109 of 2025

complaint on file, the learned Magistrate is required to apply his mind.

Referring to Page No.26 of the typed set of papers, the learned counsel for the petitioner submitted that the learned Magistrate, by issuing a rubber stamp order, had taken cognizance, which is improper. Therefore, the learned counsel prayed for quashing of the proceedings in S.T.C.No. 1543 of 2023, pending against the petitioner before the learned Judicial Magistrate Court No.I, Virudhunagar.

6. The learned Additional Public Prosecutor appearing for the first respondent submits that the point raised by the learned counsel for the petitioner regarding the owner of the property, in relation to the disfigurement, does not apply in this case. The statue was installed on a public road and covered by the Election Officers to ensure neutrality and prevent undue influence. The petitioner deliberately removed the cloth, exposing the statue to the public and thereby attempting to influence the voters.

7. The learned Additional Public Prosecutor fairly submits that cognizance was taken by a rubber stamp order, with no indication that the delay has been condoned.



Crl.O.P.(MD)No.109 of 2025

WEB COPY

8. Considering the above submissions and after perusing the materials on record, this Court finds that cognizance has been taken by a rubber stamp order, with no indication that the delay has been condoned. Furthermore, this Court, in numerous cases and relying on judgments of the Hon'ble Apex Court, has consistently held that the process of taking cognizance is a judicial act that requires the application of mind. A rubber stamp cognizance is not cognizance in the eyes of the law, as it merely involves placing a seal on the complaint and filling in the gaps. Such rubber stamp cognizance has been disapproved by this Court. A useful reference can be made to the judgment of this Court in **Shanmugam and others vs. Inspector of Police, Ariyalur Police Station, Ariyalur and others**, reported in (2019) 3 MLJ (Crl.) 339. The Hon'ble Apex Court also addressed this issue in **S.K.Sinha, Chief Enforcement Officer vs. Videocon International Ltd. & Ors.**, reported in (2008) 1 SCC (Crl.) 471.

9. Furthermore, in this case, there is no complaint from any rival political party regarding the removal of the cloth from the statue of Dr.M.G.Ramachandran, which was placed by the election authorities



Crl.O.P.(MD)No.109 of 2025

WEB COPY

during the election period, thereby exposing the figure of the leader and drawing attention to the late political leader.

10. In view of the above, the proceedings pending against the petitioner in S.T.C.No.1543 of 2023, on the file of the Judicial Magistrate Court No.I, Virudhunagar, is quashed. Accordingly, the Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

22.01.2025

NCC : Yes / No
Index : Yes / No
smn2

To

- 1.The Judicial Magistrate No.I,
Virudhunagar.
- 2.The Sub Inspector of Police,
Virudhunagar Bazzar Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



Crl.O.P.(MD)No.109 of 2025

M.NIRMAL KUMAR, J.

smn2

Order made in
Crl.O.P.(MD)No.109 of 2025

Dated: 22.01.2025