



WWW.LIVELAW.IN *Crl.O.P.(MD).No.15546 of 2017*

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 15.03.2021

DELIVERED ON: 19.04.2021

CORAM

The Hon'ble **Mr. Justice G.ILANGOVAN**

Crl.O.P.(MD).No.15546 of 2017

and

Crl.M.P.(MD).Nos.10350 & 11272 of 2017

Balamurugan @ Bala

... Petitioner

1. State Rep. By
The Inspector of Police,
District Crime Branch,
Tirunelveli.
(Crime No.21 of 2017)

2. N.Sandeep

The District Collector

O/o. The District Collector,

Tirunelveli District.

... Respondents

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Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in connection with FIR in Crime No.21 of 2017 on the file of the first respondent for alleged offences under Section 501 of IPC and Section 67 of the Information Technology Act, 2000 and quash the same as illegal.



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For Petitioner

: Mr.S.Vanchinathan

For respondents

: Mr.M.Ganesan

Government Advocate (Crl. Side)

for R1.

R2 – No appearance

ORDER

This petition has been filed, seeking to quash the First Information Report in Crime No.21 of 2017, on the file of the first respondent Police.

2. The second respondent herein / de-facto complainant was working as the District Collector during the relevant point of time and on 31.10.2017, he had lodged a complaint with the first respondent police, on the following grounds:-

The accused, who is the petitioner herein, has published a cartoon in his personal face book page on 24.10.2017, regarding the self immolation incident that took place on 23.10.2017. In the cartoon, he portrays the burning body of the baby, which was watched by three persons, without clothes and carrying currency notes to cover their private parts. The said three are named as the District Collector, the Superintendent of police and the Hon'ble Chief Minister of Tamil Nadu. This cartoon is highly



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humiliating and defamatory. This cartoon was published without proper verification of the facts. It has also prevented the Government Officers from discharging their duties, because of the false accusation.

3. On the basis of the complaint given by the second respondent, a case in Crime No.21 of 2017 was registered for the offences punishable under Section 501 of IPC and Section 67 of the Information Technology Act, 2000. When the investigation was undertaken, the accused has preferred this petition to quash the First Information Report, on the following grounds:-

The petitioner was arrested on 05.11.2017, without following the dictum laid down in **D.K.Basu's** case and later, he was enlarged on bail. The first respondent police has no jurisdiction to register a case as it clearly falls under Section 199 of Cr.P.C. The offence under Section 67 of IT Act is a non-cognizable offence. The police has no right to register the case and investigate without prior permission, under Section 152 of Cr.P.C. The First Information Report has been filed against the accused's freedom of thought and expression, which has been granted to the citizens under Article 19(1) of the Citizens of India.



4. In the counter affidavit filed by the first respondent, it is mentioned that investigation was started and statements of witnesses were recorded and it was almost completed and only because of the interim order passed by this Court, they are not in a position to file the final report. The facts and aspects that have been made in the petition as well as the grounds cannot be entertained at this stage.

5. The short point, which arises for consideration in this petition, is exactly similar to that one, which was dealt by this Court in Crl.O.P. (MD)No.13285 of 2013 dated 05.04.2008. A cartoon, which was in dispute in that case, was with reference to the internal affairs of the political party. This Court by the order stated above, has compared the cartoon with that of a story of the capseller and the monkies. During the course of discussion, the Hon'ble Judge, who is known for his unique way of approaching the issue, has compared the cartoon, which is now under dispute in this petition with that one.

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6. The question, which arises for consideration is that where from the fundamental rights of freedom of thought and expression must begin and where it must end. Freedom of thought and expression is subject to the limitations that have been set out in the Article 19(2) of Constitution of



India. Just like, any other citizen, a cartoonist is also bound by the law and in the form of a cartoon, he cannot defame any one, this is the settled position of law.

7. Moreover, in the recent times another problem, which was created by a cartoonist throughout the world is the “Toon Controversy”. That cartoon was about the Prophet Mohammed, which created controversy throughout the World. The discussion emanated from this episode is as to the limitations of freedom of speech and expression and as well as the principles of hate speech and expression. In a democratic country, freedom of thought, expression and speech are the foundations upon which democracy survives, without which there can be no democracy and therefore, no evolution of the Human Society. But, at the same time, as mentioned earlier, it has own its limitations. What are the limitations and determining bounds of this nature of thought and expression. It is not boundless and whether a particular criticism by the cartoonists was well within his bounds has to be decided only in the context of the particular issue. The context is the determining factor. Words spoken, cartoon drawn if taken away from the context, it will loss its soul and life.



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8. Here, as mentioned earlier, the petitioner wanted to express his angry, griefs and criticism regarding the inability of the administration, both Executive and Police, in containing the collection of exorbitant interest by the money lenders.

As mentioned, three lives were lost in the premises of the Collectorate over the demand of exorbitant interest by a money lender. The problem pertains not with reference to the grief, criticism or the social interest which the petitioner wanted to explain and create an awareness in the mind of the people, but the manner in which it was expressed becomes controversy. Depicting the officials right from the Head of the Executive down to the District Police in that form created the controversy. The Collector of Thirunelveli got humiliated by this depiction. On the face of it, if any ordinary person looks at the cartoon may encounter so many thoughts. Some may feel that it is an over exaggeration of the event. Some may feel that the Authorities are not taking proper steps and they are not interested in protecting the life of the citizens and others may thought it is highly obscene. So, this differs from person to person depending upon his ability to see the particular event in a particular dimension. But, whatever it may be, as mentioned earlier, it has created certain humiliation in the mind of the Collector and so, he preferred the complaint. So, the point, which arises for



consideration, whether it is obscene and highly defamatory. The question of obscenity does not arise.

9. The learned counsel for the petitioner would submit that the Judgment of the Hon'ble Supreme Court in the case of Ranjit D.Udeshi Vs State of Maharashtra, is followed in a number of Judgments more particularly in the famous Judgment *in the case of Maqbool Fida Husain Vs Raj Kumar Pandey* and it has been stated in the following words;

“Whether it is so gross and its obscenity so decided that it is likely to deprave and corrupt those whose minds are open to influences of this sort. Where art and obscenity are mixed, art must so preponderant as to throw the obscenity out into the shadow or the obscenity so trivial and insignificant that it can have no effect and may be overlooked.”

10. The intention of the petitioner in depicting the people in such a form can be easily understood. He wants to express his grief that the Authorities have to be ashamed of themselves over the inability or inaction in containing the demand of exorbitant interest by the money lenders. But, they do not want to be ashamed and protected their shameness with the currency notes. Here, the same is only with reference to the inability of the



petitioner is not to defame the Authorities, but to expose gravity of the issue involved. Section 499 of IPC defines defamation; The ingredients are,

" Defamation Essentials of (i) making or Publishing any imputation concerning any person.

(2) Such imputations must have been made by words either spoken or intended to be read are by sends are by visible representations and (3) Said imputation must have been that the intention to harm, or knowing or having reason to believe that such imputation will harm, the reputation of the present concerned. "

11. It is to be noted that, what he intended as mentioned earlier is to express his angry. This cannot be construed as an intention to indulge on absenity or defamation. This question does not arise. In the complaint, the second respondent stated that the intention of the petitioner is to defame the Chief Minister as well as the Government Officials. But his intention is not so, may be to some extent over exaggeration of inaction on the part of the Government Officials. But the context as mentioned earlier shows that it did not contain any criminality. But Ethical questions may involve. But the Court cannot teach the ethicality to the people and it is for the Society to evolve and follow the ethical standards.



12. Before concluding the discussion, in the words of Benjamin Fracklin, in 1722.

" Without Freedom of Thought, there can be no such Thing as Wisdom; and no such Thing as public Liberty, without Freedom of Speech; which is the Right of every Man, as far as by it, he does not hurt or control the Right of another; And this is the only Check it ought to suffer, and the only Bounds it ought to know, Two centuries later it remains difficult in law to draw the outmost bounds of freedom of speech and expression, the limit beyond which the right would fall foul and can be subordinated to other democratic values and public law considerations, so as to constitute a criminal offence. The difficulty arises in ascertaining the legitimate countervailing public duty, and in proportionality and reasonableness of the restriction which criminalises written or spoken words. Further, criminalisation of speech is often demarcated and delineated by the past and recent significant events affecting the nation including explanation of their causes. "

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Even after the passage of several centuries, the debate still goes on and will go on endlessly.



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13. With the above observation, continuing the investigation against the petitioner will make no purpose. In my considered opinion, no criminality is involved in the cartoon and so, the criminal proceedings is liable to be quashed.

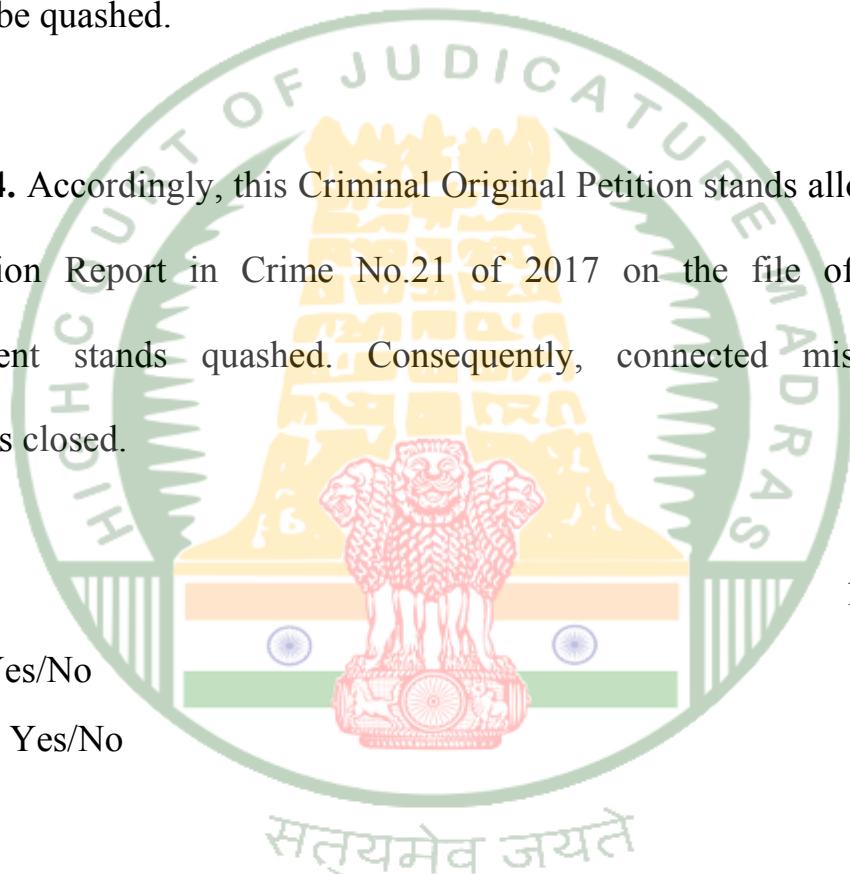
14. Accordingly, this Criminal Original Petition stands allowed. First Information Report in Crime No.21 of 2017 on the file of the First Respondent stands quashed. Consequently, connected miscellaneous petition is closed.

19.04.2021

Index : Yes/No

Internet : Yes/No

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To

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1. The Inspector of Police,
District Crime Branch,
Tirunelveli.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

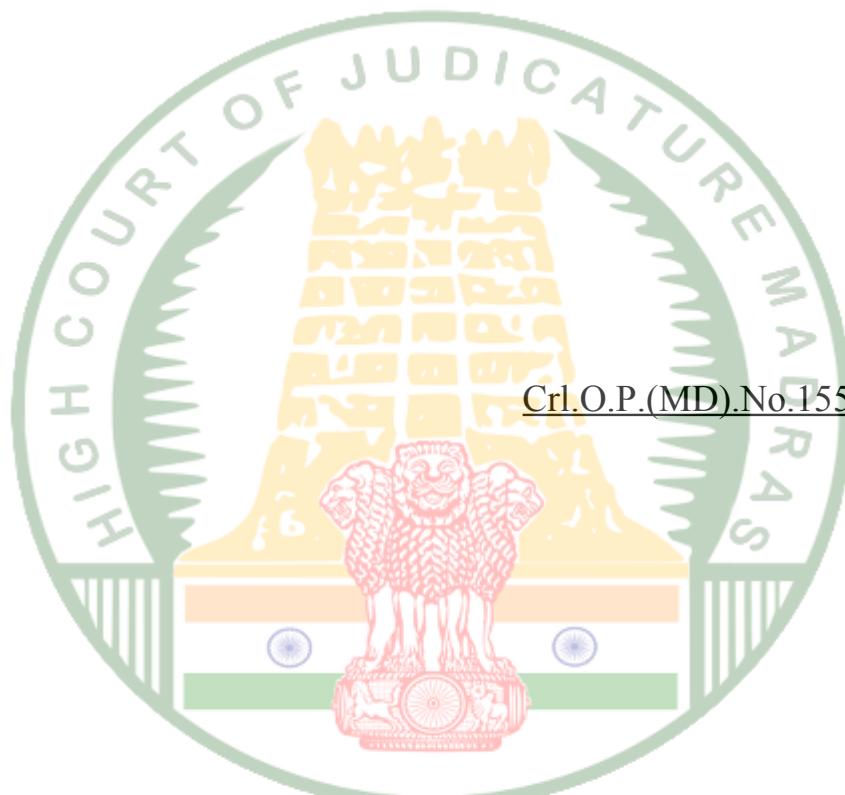


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G.ILANGOVAN,J.

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