

1 CRL.O.P.(MD)NO.8010 OF 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 15.12.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHANCrl.O.P.(MD)No.8010 of 2021 and
CRL.M.P.(MD)No.4123 of 2021

R. Rajendran
(Wrongly mentioned as Tamil R.Rajendran)
... Petitioner / Accused No.2

Vs.

1. The Inspector of Police,
Thanthonimalai police station,
Karur,
Karur District.
(Crime No.484 of 2020) ... Respondent No.1 / Complainant
2. Kathirvel ... Respondent No.2 /
Defacto Complainant

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.484 of 2020 dated 12.08.2020 on the file of the first respondent and quash the same as illegal as against the petitioner alone.

For Petitioner : Mr.T.Lajapathi Roy

For R-1 : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor.For R-2 : Mr.G.Thalaimutharasu,
for Mrs.S.Prabha.
* * *



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ORDER

Heard, Mr.T.Lajapathi Roy, learned counsel appearing for the petitioner and Mr.E.Antony Sahaya Prabahar, learned Additional Public Prosecutor appearing for the first respondent and Mr.G.Thalaimutharasu, learned counsel appearing for the second respondent.

2. This criminal original petition has been filed to quash the impugned First Information Report as far as the petitioner is concerned. The petitioner had formed a Whatsapp group in the name and style of “ Karur Lawyers ”. He was the group administrator. In the said Whatsapp group, certain highly offensive messages were posted by one Pachaiyappan. A reading of the said messages would clearly cause ill-feeling between two communities. Therefore, the second respondent who is also a practising lawyer lodged information before the first respondent. That led to registration of the First Information Report in Crime No.484 of 2020 for the offences under Sections 153A and 294(b) of I.P.C. Contending that the petitioner was only a group administrator and he is no way



responsible and he cannot be implicated as an accused, this
WEB COPY criminal original petition has been filed.

3. The learned counsel appearing for the second respondent contended that the petitioner is lacking in *bona fides*. After the objections were raised, the petitioner removed the said Pachaiyappan from the Whatsapp group. He re-induced him within a few days. According to the learned counsel, there was collusion between the petitioner and the said Pachaiyappan.

4. The learned Additional Public Prosecutor submitted that as of now forensic report is still awaited and only after the report is received, one can come to conclusion as to whether the message was posted only by Pachaiyappan or whether it was posted in his name by the petitioner.

5. I carefully considered the rival contentions.

6. Since forensic report is still awaited, it would be pre-mature to entertain this petition. However, the first



respondent shall bear in mind the decision of the Hon'ble **BOMBAY HIGH COURT** reported in (2021) 2 AIR Bom R (Cri) 574 (Kishore V. State Maharashtra). In the aforesaid decision it was held as follows:-

“ 8. The crux of the issue involved is whether an administrator of Whatsapp group can be held criminally liable for objectionable post of its member for committing offences punishable under sections 354-A(1)(iv), 509 and 107 of the Penal Code, 1860 and section 67 of the Information Technology Act, 2000. To adjudicate the said issue, it is necessary to understand functioning of Whatsapp messaging service. Whatsapp is an instant messaging platform which can be used for mass-communication by opting to create a chat group. A chat group is a feature on Whatsapp which allows joint participation of members of the chat group. Group Administrators, as they are generally called, are the ones, who create the



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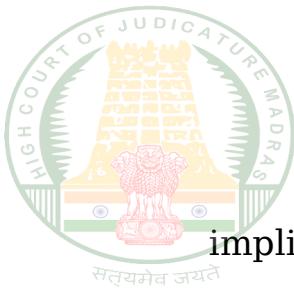
group by adding or deleting the members to the same. Every chat group has one or more group administrators, who control participation of members of the group by deleting or adding members of the group. A group administrator has limited power of removing a member of the group or adding other members of the group. Once the group is created, the functioning of the administrator and that of the members is at par with each other, except the power of adding or deleting members to the group. The Administrator of a Whatsapp group does not have power to regulate, moderate or censor the content before it is posted on the group. But, if a member of the Whatsapp group posts any content, which is actionable under law, such person can be held liable under relevant provisions of law. In the absence of specific penal provision creating vicarious liability, an administrator of a Whatsapp group cannot be held liable for objectionable content posted by a



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member of a group. A group administrator cannot be held vicariously liable for an act of member of the group, who posts objectionable content, unless it is shown that there was common intention or pre-arranged plan acting in concert pursuant to such plan by such member of a Whatsapp group and the administrator. Common intention cannot be established in a case of Whatsapp service user merely acting as a group administrator. When a person creates a Whatsapp group, he cannot be expected to presume or to have advance knowledge of the criminal acts of the member of the group. We are not examining the issue of liability of an administrator if he is a creator of objectionable content, as it is not arising in the facts of the present case.”

7. If the petitioner had played the role of a group administrator alone and nothing else, then while filing final report, the petitioner's name shall be deleted. If some other material is also gathered by the first respondent so as to



implicate the petitioner, then of course the petitioner will have
WEB COPY to challenge the case only on merits.

8. With this direction to the first respondent, this criminal original petition is disposed of. Consequently, connected miscellaneous petition is closed.

15.12.2021

Index : Yes / No
Internet : Yes/ No
PMU

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1. The Inspector of Police,
Thanthonimalai police station,
Karur,
Karur District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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G.R.SWAMINATHAN,J.

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