

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 04.02.2022

Pronounced on : 24.02.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.OP(MD)Nos.20380 & 20387 of 2021

and

CRL.MP(MD)Nos.11584 & 11588 of 2021

Rangarajan Narasimhan

... Petitioner in both the cases

vs.

- 1.The Inspector of Police,
Srirangam Police Station,
Srirangam, Trichy -620 006.
- 2.The Sub Inspector of Police,
Srirangam Police Station,
Srirangam, Trichy - 620 006.
- 3.The Commissioner,
Hindu Religious & Charitable
Endowments Department,
119, Uthamar Gandhi Salai,
Nungambakkam, Chennai – 600 034.
- 4.Shri.Venu Srinivasan
Ex-Chairman Board of Trustees of
Sri Ranganatha Swamy Temple,
New No.3, Old No.2,, Adyar Club Gate Road,
Chennai – 600 028.



5.Shri.Jayaraman,
Ex.Joint Commissioner/Executive Officer of
WEB COPY Sri Ranganatha Swamy Temple,
No.149, North Chitra Street,
Srirangam, Trichy – 620 006.

... Respondents
in both the cases

Common Prayer: Criminal Original Petitions filed under Section 482 of Cr.PC to call for the records in the First Information Report in Srirangam PS Crime Nos.495 & 552 of 2019 and quash the same.

In both cases : -

For Petitioner : Mr.Rangarajan Narasimhan
(party in person)

For Respondents : Mr.E.Antony Sahaya Prabhakar
Additional Public Prosecutor
for R1 to R3

Mr.M.Saravanan for R5

COMMON ORDER

Tamil Nadu is a land of temples. They have played a central role in our culture. However, their current condition leaves a lot to be desired. Lands endowed for their maintenance have been gobbled up by private interests. Antique idols have been stolen and smuggled overseas. The temple staff are paid a pittance. Thousands of temples are facing utter neglect. Even poojas are not being performed. Much needs to be done to revive their glory. The way forward is laid down in



the magnum-opus of a decision authored by His Lordship Mr.Justice

WEB CORP. R.Mahadevan in ***Periyanambi Narasimha Gopalan Vs. Secretary***

to Government, Tourism, Culture and Religious Endowments

Department and Ors in Suo Motu W.P. No. 574 of 2015 etc.

[MANU/TN/4081/2021].

2. There is also one fundamental issue concerning the administration of temples. Should they continue to be under the thumb of the government? Should not the government professing to be secular treat all religious institutions on par?. Are not knowledgeable and committed activists like Shri.T.R.Ramesh justified in arguing that the government should exercise the same degree and level of control over temples as are exercised over churches and mosques?. Such questions and thoughts cross my mind because the petitioner before me is not only a passionate devotee but also an activist. His bona fides are beyond question. But the way he goes about at times can make one feel uncomfortable. He has been training his guns on Shri.Venu Srinivasan, the fourth respondent herein who was the Chairman of the Board of Trustees of Sri Ranganatha Swamy Temple, Srirangam.



3.Shri.Venu Srinivasan is a recipient of Padma Bhushan, one of the highest civilian honours. His philanthropic and charitable activities are well known. He has spent his time, money and energy for the restoration of a number of temples. The Hon'ble Vice President of India Shri.M.Venkaiah Naidu while commending the work of renovation and conservation of Sri Ranganathaswamy Temple said thus :

"What struck me as remarkable is the tremendous passion that has driven this project - the vision set by the Chairman of the Board, Shri Venu Srinivasan And it is not passion alone. It is the spirit of service that lifts this project from the realms of the ordinary to that of the extraordinary...."

I feel like telling the petitioner that the level of discourse or debate must always conform to the highest standards of civility. There can be no place for force or violence even in the slightest degree. Of course, I am not here to dish out sermons to the petitioner. I am no Prashant Kishor. The petitioner has not come to me for consultation. He has come seeking adjudication and I better confine my role to that.

4.The petitioner is the accused in Crime Nos.495 & 552 of 2019 on the file of the Srirangam Police Station. Sections 500 and 505(2) of IPC figure in both the FIRs. Section 45 of the Information Technology



Act has been added to give extra flavour in Crime No.552 of 2019. The ~~WEB COPY~~ then Executive Officer of the temple is the defacto complainant in both the cases. According to the defacto complainant, the petitioner has made highly defamatory allegations against the temple management in the social media; the allegations are not only wild but also calculated to cause alarm in the minds of the devotees.

5.While exercising jurisdiction under Section 482 of Cr.PC, I cannot go into contentious facts. The petitioner alleges that since he is exposing several wrong doings of the temple management, the fourth and fifth respondents have conspired with each other to lodge the impugned FIRs. The contesting respondent contends that there is no iota of truth in any of allegations made by the petitioner and since the petitioner is spreading mischievous rumors and canards, he has to be necessarily prosecuted.

6.After carefully considering the rival contentions, I am satisfied that the impugned FIRs are not maintainable. If the petitioner had committed the offence of defamation, registration of an FIR cannot be the response. Section 199 of Cr.PC contains an embargo. It prescribes that no court shall take cognizance of all offences punishable under



Chapter XXI of the IPC except upon a complaint made by some person aggrieved by the offence. An FIR cannot be registered for the offence under Section 500 of IPC.

7. The question that next falls for consideration is whether the ingredients of Section 505(2) of IPC are present. The said provision reads as follows:

"Statements creating or promoting enmity, hatred or ill-will between classes-

Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both."

In ***Bilal Ahmed Kaloo v. State of A.P*** (1997 CriLJ 4091), the Hon'ble Supreme Court held that the common feature in Sections 153A and 505(2) being promotion of feeling of enmity, hatred or ill-will "between different" religious or racial or linguistic or regional groups or castes and



communities, it is necessary that at least two such groups or communities should be involved. Further, it was observed that merely inciting the feeling of one community or group without any reference to any other community or group cannot attract either of the two Sections. The petitioner's allegations do not involve two groups at all. The Hon'ble Supreme Court had clearly held that unless one group is pitted against the other on the aforementioned grounds, the penal provisions are not at all attracted. The petitioner has not pitted one group against the other. The petitioner is a Vaishanavite. So is the fourth respondent. The Srirangam Lord Ranganathaswamy Temple is the most important Vaishvanite institution and the fifth respondent is its Executive Officer. Thus, there is no pitting of one group against the other on any of the grounds set out in the penal provision. Hence, Section 505(2) of IPC will not be attracted as its elementary ingredients are absent.

8.Invocation of Section 45 of the Information Technology Act in the impugned FIR is also misplaced. The said provision reads as follows :

"Residuary penalty.-Whoever contravenes any rules or regulations made under this Act, for the contravention of which no penalty has been separately provided, shall be



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liable to pay a compensation not exceeding twenty-five thousand rupees to the person affected by such contravention or a penalty not exceeding twenty-five thousand rupees."

The Information Technology Act, 2000 contains as many as XIII Chapters. Chapter XI deals with offences (Section 65 to 78). Chapter IX deals with 'penalties, compensation and adjudication'. In an essay published in **(2014) PL December 76** on **Frauds and Cyber Frauds in Banking Sector**, it is mentioned that the Information Technology Act, 2000 has made the banks liable for both criminal and civil action. In the footnotes, Sections 65 to 74 are referred under the former category while Section 43 to 45 are referred under the latter category. The statutory scheme is very clear and admits of no doubt. Section 45 can be invoked for the purpose of recovering compensation under the circumstances set out in the provision itself. It is not a substantive offence.

9.When the petitioner was arrested, Thiru.S.Somasundaram who was the jurisdictional magistrate following the guidelines of the Hon'ble Apex Court in **Arnesh Kumar vs. State of Bihar (2014) 8 SCC 273**, rightly declined to remand the petitioner and set him at liberty. I commend him.

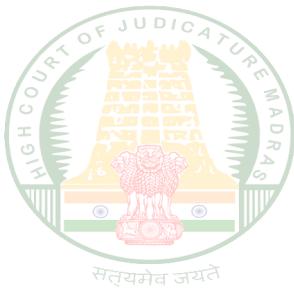
**10. In *Vinod Dua vs. Union of India (UOI) and Ors. AIR***

WEB CO~~2021~~ **SC 3239**, the Hon'ble Supreme Court clarified that every prosecution under Sections 124 A and 505 IPC must be in strict conformity with the scope and ambit of the Sections as explained in, and completely in tune with the law laid down in ***Kedar Nath Singh v. State of Bihar (AIR 1962 SC 955)***. After so holding, the Hon'ble Supreme Court quashed the FIR registered against Shri.Vinod Dua by invoking Article 32 of the Constitution of India.

11. The Hon'ble Supreme Court in ***State of Haryana v. Bhajan Lal (1992) Supp (1) SCC 335***, laid down seven categories of cases by way of illustration wherein the constitutional courts would be justified in invoking the extraordinary power under Article 226 or the inherent powers under Section 482 of Cr.Pc to quash the criminal prosecution. They are as under :

"1. 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.

2. 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.

3. 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 any offence and make out a case against the accused.

4. Where, the allegations in the F.I.R. 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.

5. 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.

6. 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.

7. 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."

In this case, parameters 1, 3 and 6 are applicable. To recapitulate, Section 500 of IPC can be prosecuted only in the manner set out in Section 199 of Cr.PC. Therefore, the sixth parameter mentioned above will come into play. Since the petitioner has not pitted one group against the other on the grounds set out in the provision, the ingredients of Section 505(2) of IPC are also absent. Hence, the first and third parameters mentioned above can be pressed into service in favour of the petitioner. Section 45 of the Information Technology Act, 2000 provides only a civil remedy and is not a penal provision. Looked at from any angle, the impugned FIRs are not maintainable. Allowing the prosecution to continue would only be an abuse of legal process. The impugned FIRs are quashed. The criminal original petitions are allowed. Connected miscellaneous petitions are closed.

24.02.2022

Index : Yes / No
Internet : Yes/ No
skm



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,
Srirangam Police Station,
Srirangam, Trichy -620 006.
2. The Sub Inspector of Police,
Srirangam Police Station,
Srirangam, Trichy - 620 006.
3. The Commissioner,
Hindu Religious & Charitable
Endowments Department,
119, Uthamar Gandhi Salai,
Nungambakkam, Chennai – 600 034.
4. The District Munsif cum Judicial Magistrate,
Srirangam.
5. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.



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