

Crl..O.P.(MD).No.10701 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD)No.10701 of 2017

and

Crl.M.P.(MD).No.7337 of 2017

K.Divya @ Divyabharathi

.. Petitioner / Sole Accused

Vs.

1. The Inspector of Police,
Othakadai Police Station,
Madurai District.
(Crime No.469 of 2017)

.. 1st Respondent

2. S.Baskar Maduram

.. 2nd Respondent /
Defacto Complainant

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the First Information Report in Crime No.469 of 2017, dated 03.08.2017 on the file of the first respondent for offences under Sections 153(A) and 505 (1)(b) of Indian Penal Code r/w 66 (F) of Information Technology Act, 2000, given by the second respondent and quash the same as illegal

against the petitioner/sole accused.

For Petitioner : Mr.Anto Prince
for M/s.T.Lajapathi Roy

For Respondents : Mr.M.Chandrasekar
Additional Public Prosecutor
for R1

Mr.A.Kannan
for R2

ORDER

This Criminal Original Petition has been filed challenging the FIR registered in Crime No.469 of 2017, pending before the first respondent police.

2. The petitioner is a social activist and she is involved in various social issues including abolition of manual scavenging. She has conducted field studies for that purpose and is attempting to bring out an awareness in order to completely abolish this practise of manual scavenging.

3. In pursuance of her mission of creating awareness for abolition of manual scavenging, she has taken a documentary film,

namely, “Kakoos”. This was also widely viewed in the you-tube.

4. The second respondent, who claims himself to be an advocate and also an office bearer of a political outfit called as “Puthiya Tamizhagam” has given a complaint to the first respondent police to the effect that he saw the documentary taken by the petitioner, in the you-tube and the documentary proceeds as if this work is done by a particular community called Thevendra Kula Vellalar. By projecting this work to be performed by persons belonging only to this community, the second respondent alleges that the petitioner has taken the documentary with malafide intention and has thereby defamed and brought a very bad name to the concerned community. As a result of this documentary, the petitioner is attempting to create a caste conflict and promoting enmity and thereby is disturbing the public tranquility. This complaint was received by the first respondent police and an FIR came to be registered by the first respondent police against the petitioner for an offence under Section 153(A) and 505 (1)(b) of IPC r/w 66 F of the Information Technology Act, 2000.

5. The learned counsel for the petitioner submitted that even if the complaint is taken as it is, no offence has been made out

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against the petitioner. The learned counsel submitted that an attempt has been made by the second respondent to stifle the freedom of expression and a documentary film, which has been taken for the purpose of bringing awareness about the abolition of manual scavenging, is sought to be prevented by means of police complaint. The learned counsel submitted that the prosecution of the petitioner is a clear abuse of process of law and it requires the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

6. The learned counsel appearing on behalf of the second respondent submitted that the petitioner in the name of taking a documentary has completely defamed a particular community. The learned counsel submitted that by taking such a documentary and propogating it in the you-tube, persons, who watch the documentary belonging to this community, will be instigated and it will cause enmity between the groups and will result in disturbance to public tranquility. The learned counsel submitted that it is the duty of the petitioner to prove as to how she came to a conclusion that manual scavenging is done only by a particular community. The learned counsel concluded his arguments by submitting that the respondent police must continue to

investigate this case and a time limit must be fixed for the conclusion of the investigation.

7. The learned Additional Public Prosecutor appearing on behalf of the respondent police submitted that a reading of the complaint, makes out an offence in this case. He further submitted that a time limit can be fixed by this Court and the investigation will be completed and final report will be filed before the appropriate Court.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. The averments made in the complaint has been stated supra. The question is whether those averments will constitute an offence under Section 153(A) and 505 (1)(b) of IPC. A bare reading of Section 153 A of IPC postulates any act which promotes enmity between the groups on grounds of religion and race etc., or which are prejudicial to national integration, punishable. The purpose of enactment of such a provision was to check fissiparous communal and separatist tendencies and secure fraternity so as to ensure the dignity of the individual and the unity of the nation. Similarly,

Section 505 of IPC is aimed at reports calculated to produce mutiny or to induce one Section of the population to commit offences against another and to prevent and remove communal and religious tensions. The common feature in Section 153 A and Section 505, being promotion of felling of enmity, hatred or ill will between different religious or racial or linguistic or regional groups or cause and communities, it is necessary that at least two such groups or communities should be involved.

10. In the considered view of this Court, the allegations made in the complaint does not make out a case under Sections 153 A and 505 (1)(b) of IPC. In the first place, the documentary in question is intended to create an awareness among general public for abolition of manual scavenging. If in the documentary, any community has been named, it will not amount to an offence under Sections 153 A and 505 (1)(b) of IPC. There is no allegation in the complaint to show that there is promotion of feeling of enmity, hatred or ill will between different groups or communities. The only reference made in this complaint is to one particular community. Therefore, even if an extreme case is taken, at the best, the allegations made in the complaint will only amount to defaming a particular community and nothing more. It is not known on what

basis the respondent police registered the FIR for the offence under Sections 153 A and 505 (1)(b) of IPC.

11. The next issue to be gone into is as to whether the offence under Section 66 F of the Information Technology Act, 2000, can be applied in the present case. The said provision is extracted hereunder:

"66-F. Punishment for cyber terrorism.—

(1) Whoever,—

(A) with intent to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of the people by—

(i) denying or cause the denial of access to any person authorised to access computer resource; or

(ii) attempting to penetrate or access a computer resource without authorisation or exceeding authorised access; or

(iii) introducing or causing to introduce any computer contaminant,

and by means of such conduct causes or is likely to cause death or injuries to persons or damage to or destruction of property or disrupts or knowing that it is likely to cause

damage or disruption of supplies or services essential to the life of the community or adversely affect the critical information infrastructure specified under Section 70; or

(B) knowingly or intentionally penetrates or accesses a computer resource without authorisation or exceeding authorised access, and by means of such conduct obtains access to information, data or computer database that is restricted for reasons for the security of the State or foreign relations; or any restricted information, data or computer database, with reasons to believe that such information, data or computer database so obtained may be used to cause or likely to cause injury to the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence, or to the advantage of any foreign nation, group of individuals or otherwise, commits the offence of cyber terrorism.

(2) Whoever commits or conspires to commit cyber terrorism shall be punishable with imprisonment which may extend to imprisonment for life."

12. The above provision deals with a punishment for cyber terrorism. In order to commit cyber terrorism, it must be shown that the act must be done to threaten the unity, integrity, security or sovereignty of India or to strike terror in the people or any section of people. The complaint given by the second respondent does not in any way attract the provisions of Section 66 F of the Information Technology Act, 2000. The documentary that has been produced by the petitioner cannot be termed as a cyber terrorism.

13. In the considered view of this Court, the FIR that has been registered against the petitioner is clearly an abuse of process of law, which requires the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C. The complaint given by the second respondent and the FIR registered by the police clearly amounts to interfering with the fundamental right of speech and expression guaranteed to the petitioner.

14. In the result, the FIR in Crime No.469 of 2017 on the file of the first respondent is hereby quashed and accordingly,

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this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

20.11.2019

Index : Yes / No

Internet : Yes / No

PJL

To

1.The Inspector of Police,
Othakadai Police Station,
Madurai District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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N.ANAND VENKATESH,J.

PJL

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