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Crl OP(MD)No.18337 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 17.12.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl OP(MD)No.18337 of 2021

and

Crl MP(MD)No.10063 of 2021

Mathivanan

... Petitioner

vs.

1.The Inspector of Police,
Vadipatty Police Station,
Madurai District.
(Crime No.415 of 2021)

2.D.Balasubramaniyan
Sub Inspector of Police,
Vadipatty Police Station,
Madurai District.

3.The Inspector of Police,
Cyber Crime Police Station,
Madurai City.

... Respondents

(R3 suo motu impleaded vide
order dated 24.11.2021)

Prayer: Criminal Original Petition filed under Section 482 of Cr.Pc, to call for the entire records of the FIR in Crime No.415 of 2021 on the file of the first respondent police station and quash the same as illegal insofar as the petitioner herein is concerned.



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For Petitioner : Mr.Henri Tiphagne

For Respondents : Mr.T.Senthil Kumar,
Additional Public Prosecutor.

ORDER

Jug Suraiya, Bachi Karkaria, E.P.Unny and G.Sampath ... if any one of them, or for that matter any satirist or cartoonist had authored this judgement, they would have proposed a momentous amendment to the Constitution of India to incorporate sub-clause (l) in Article 51-A. Article 51-A states that it shall be the duty of every citizen of India-

“(a)to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;

(b)to cherish and follow the noble ideals which inspired our national struggle for freedom;

(c)to uphold and protect the sovereignty, unity and integrity of India;

(d)to defend the country and render national service when called upon to do so;

(e)to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;



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(f)to value and preserve the rich heritage of our composite culture;

(g)to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

(h)to develop the scientific temper, humanism and the spirit of inquiry and reform;

(i)to safeguard public property and to abjure violence;

(j)to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement;

(k)who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.”

To this, the hypothetical author would have added one more fundamental duty - duty to laugh. The correlative right to be funny can be mined in Article 19 (1) (a) of the Constitution of India (the use of crypto vocabulary to be forgiven). Being funny is one thing and poking fun at another is different altogether.

2.“Laugh at what?” is a serious question. This is because we have holy cows grazing all over from Varanasi to Vadipatty.



One dare not poke fun at them. There is however no single catalogue of holy cows. It varies from person to person and from region to region. A real cow, even if terribly underfed and emaciated, shall be holy in Yogi's terrain. In West Bengal, Tagore is such an iconic figure that Khushwant Singh learnt the lesson at some cost. Coming to my own Tamil Desh, the all-time iconoclast "Periyar" Shri.E.V.Ramasamy is a super-holy cow. In today's Kerala, Marx and Lenin are beyond the bounds of criticism or satire. Chhatrapati Shivaji and Veer Savarkar enjoy a similar immunity in Maharashtra. But all over India, there is one ultimate holy cow and that is "national security".

3.The petitioner herein is an important office-bearer of a not-so-important political party. CPI (ML) is now an over-ground organization which contests elections also. Paper warriors are also entitled to fantasise that they are swadeshi Che Guevaras.

4.On 16.09.2021, the petitioner herein went on a sightseeing pleasure trip with his daughter and son-in-law to Sirumalai hills. He put out the photographs taken on the occasion in his Facebook page. He gave the caption "துப்பாக்கி பயிற்சிக்காக



சிறுமலை பயணம்!" (Trip to Sirumalai for shooting practice).

Revolutionaries, whether real or phoney, are not usually credited with any sense of humour (or at least this is the stereotype). For a change, the petitioner tried to be funny. Perhaps it was his maiden attempt at humour.

5.Vadipatty Police did not find it to be a joke. They thought the petitioner was making preparations to wage war against the State. They registered a case in Crime No.415 of 2021 against the petitioner for the offences under Sections 120B, 122, 505(1)(b) and 507 of IPC. They did not stop at that. They arrested the petitioner and produced him before the jurisdictional magistrate for remanding him to custody. Mercifully, Mr.M.C.Arun, the Judicial Magistrate, Vadipatty, had the good sense to refuse remand. Bearing in mind the principles laid down in **State v. Nakeeran Gopal (2019 SCC OnLine Mad 42)**, he passed a detailed rejection order. I wish other magistrates in the State of Tamil Nadu act likewise. Remand can never be made for the asking. The police and the prosecution will seek remand in every case. It is for the magistrate to satisfy herself that the arrestee deserves to be remanded. Requests for remand must be



decided on the touchstone of Section 41 of Cr.Pc and Article 21 of the Constitution. Thanks to the judicious conduct so well exhibited by Shri.M.C.Arun (the Judicial Magistrate, Vadipatty), the petitioner escaped incarceration by a whisker.

6.This criminal original petition has been filed to quash the FIR itself. The learned counsel for the petitioner reiterated all the contentions set out in the memorandum of grounds and submitted that the very registration of the impugned FIR is an abuse of legal process. Per contra, the learned Additional Public Prosecutor appearing for the respondents submitted that no case for quashing has been made out.

7.I carefully considered the rival contentions and went through the materials on record. For an act to constitute a crime, there are four stages, i)intention, ii)preparation, iii)attempt and iv)accomplishment. While penal laws intervene only at the third and fourth stages normally, even preparation is made an offence in certain cases. Section 399 of IPC is one such provision. Section 122 IPC is another. Any penal provision has to be strictly construed. Application of the provisions which penalize even



preparation must meet a higher threshold.

WEB COPY 8. Section 122 of IPC is as follows :

“122. Collecting arms, etc., with intention of waging war against the Government of India.- Whoever collects men, arms or ammunition or otherwise prepares to wage war with the intention of either waging or being prepared to wage war against the [Government of India], shall be punished with [imprisonment for life] or imprisonment of either description for a term not exceeding ten years, [and shall also be liable to fine].”

To wage war would require several steps and crossing of stages. There has to be mobilisation of men as well as accumulation of arms and ammunition. That would require a concerted effort. Each individual who is a party to the conspiracy to wage war may be allotted a particular task. One may be tasked with collecting men, another with arms and the third with ammunition. The expression “otherwise prepares” in this context should not be construed on the application of the principle of *ejusdem generis*. A person may be engaged in fund-raising. Another may be responsible for providing reinforcements. Some may be engaged in making logistical arrangements. Some may be engaged in the intellectual front. There could be several dimensions. All of them



would fall within the scope of “otherwise prepares”. But as already held, when it comes to application of the provision to concrete facts, courts will apply a higher threshold.

9. Now let us see what the petitioner did. Except giving the title mentioned above to the photographs amateurishly taken on the occasion of his trip to Sirumalai hills, the petitioner has done nothing else. The petitioner is aged 62 years. His daughter is standing next to him. His son-in-law is also seen in the photograph. Four other photographs capturing the scenic beauty of the place have also been posted. No weapon or proscribed material was recovered from the petitioner. The petitioner neither intended to wage war nor did he commit any act towards preparation therefor.

10. Section 505(1)(b) of IPC is as follows :

“Whoever makes, publishes or circulates any statement, rumour or report,

(a)...

(b) with intent to cause, or which is likely to cause, fear or alarm to the public, or to any section of the public whereby any person may be induced to commit an offence against the State or against the public tranquility;



(c)....

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shall be punished with imprisonment which may extend to [three years], or with fine, or with both.”

This provision also can be invoked only if the offending act induces or is likely to induce any person to commit an offence against the State or against the public tranquility. In this case, the photographs with the aforesaid caption was posted only in the petitioner's Facebook page. Any normal and reasonable person coming across the Facebook post would have laughed it off.

11. Section 507 of IPC is as follows :

“507. Criminal intimidation by an anonymous communication.—Whoever commits the offence of criminal intimidation by an anonymous communication, or having taken precaution to conceal the name or abode of the person from whom the threat comes, shall be punished with imprisonment of either description for a term which may extend to two years, in addition to the punishment provided for the offence by the last preceding section.”

Invocation of this provision makes me laugh. Section 507 IPC can



be invoked only if the person sending the communication had concealed his identity. The communication must be anonymous.

In this case, the petitioner had posted the photographs along with the caption in his Facebook page. He has not concealed his identity. There is nothing anonymous about the act in question.

12. None of the ingredients set out in Section 122, 505(1) (b) and Section 507 are present in this case. Section 120 B of IPC cannot be invoked for two reasons. Firstly, the petitioner is the sole accused. To constitute the offence of conspiracy, there must be a meeting of two or more minds. One cannot conspire with oneself. Secondly, conspiracy is hatched to commit an offence mentioned in the Section. When the ingredients of the primary offences have been shown to be non-existent, the prosecution cannot hang on to Section 120B IPC alone.

13. The very registration of the impugned FIR is absurd and an abuse of legal process. It stands quashed. The criminal original petition is allowed. Connected miscellaneous petition is closed.

**17.12.2021**

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Internet : Yes/ No
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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:

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