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CrI.O.P.(MD).No.563 of 2019

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.08.2023

CORAM:

THE HONOURABLE MR. JUSTICE P.DHANABAL

CrI.O.P.(MD).No.563 of 2019
and
CrI.M.P(MD) Nos.271 and 272 of 2019

Lois Sophia @ Layis Shobia

... Petitioner

Vs.

1. The Inspector of Police
Pudukottai Police Station,
Thoothukudi District.

2. Subramanian
Director
Thoothukudi Airport,
Thoothukudi
(R2 suomotu impleaded as per the order of
this Court in the place of existing respondent
dated 14.03.2022)

3. K.Annamalai
(R3 impleaded as per the order of the Court
dated 09.02.2023 in CrI.M.P(MD) No.9524
of 2023)

..Respondents

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the case in S.T.C. No.324 of 2018 on the file of the learned Judicial Magistrate No.III, Thoothukudi and quash the same.

For Petitioner	: Mr.R.Diwakaran
For R-1	:Mr.R.M.Anbunithi Additional Public Prosecutor
For R-2	:Mr.C.Godwin
For R-3	:Mr.K.R.Laxman



ORDER

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This Criminal Original Petition has been filed to quash the proceedings in S.T.C. No.324 of 2018 on the file of the learned Judicial Magistrate No.III, Thoothukudi.

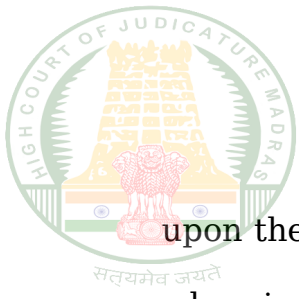
2. According to the petitioner based on the complaint given by the second respondent the first respondent registered a case in Crime No.285 of 2018 for the offences under Sections 290 of IPC and 75(1)(c) of Tamil Nadu City Police Act,1888. Thereafter the case has been investigated and charge sheet was filed for the offences under Sections 290 of IPC and 75(1)(c) of Tamil Nadu City Police Act,1888. According to the prosecution case the petitioner and the second respondent travelled by Indigo flight between Chennai to Thoothukudi on 03.09.2018. While the passengers were alighting from the flight, the petitioner herein shouted at the second respondent stating that “ Paasisa Ba.Ja.Ka. Aatchi Ozhiga”. The second respondent preferred complaint to the Airport Manager who in turn preferred complaint with the first respondent. The first respondent registered First Information Report in Crime No.285 of 2018. The alleged act of the petitioner could not be construed as offending since there was no complaint against her by the Captain or the other Crew members or any other passenger. The allegations levelled in the complaint preferred by the second respondent



stated that she has doubts over the back ground of the petitioner and does not even have a whisper about any nuisance caused to the second respondent or to any other person. The allegations do not constitute any offence under Section 290 of IPC or Section 75(1)(c) of the Tamil Nadu City Police Act, even if taken on its face value and hence the charge sheet based on such a complaint ought to be quashed. The petitioner has chosen to vent her anger against the act of the state of killing 13 persons by firing at them at Thoothukudi by raising the slogan alleged to have caused nuisance to the defacto complainant. The same could not be treated to have caused injury, danger, obstruction or annoyance to the complainant herein. Even the alleged overt act taken on its face value and accepted in their entirety do not *prima facie* constitute any offence or make out a case against the petitioner. The First Information Report has been registered for the offences under Sections 290 of IPC and Section 75(1)(c) of Tamil Nadu City Police Act which are non cognizable and no permission obtained from the learned Magistrate and procedure laid down under Section 155 of Cr.P.C have not been followed. Therefore the charge sheet in S.T.C. No.324 of 2018 is liable to be quashed.

3. No counter was filed by the respondents.

4. In this case intervenor filed intervening petition in CrI.M.P(MD) No.9524 of 2022 stating that entire criminal complaint rests



upon the complaint given by the then State President of Tamil Nadu BJP, wherein, if and only the present State President of Tamil Nadu, BJP, the petitioner herein to defend the grounds raised in the present quash petition, the ends of justice could be met and since the slogans is as against the ruling party and he being the member of the party has filed this petition but on perusal of the records it is seen that permission was already granted by this Court and he was impleaded as third respondent in this case. The original complainant was added as second respondent in this case and thereafter the name of the second respondent was deleted and the Airport authority name was included as second respondent.

5. The learned counsel appearing for the petitioner would contend that according to the complaint, First Information Report has been registered as against the petitioner for the offences under Sections 290 of IPC and Section 75(1)(c) of Tamil Nadu City Police Act and both are non cognizable offences and the procedure under Section 155 of Cr.P.C has not been followed and no permission was obtained from the learned Magistrate and the complaint was not referred to the learned Magistrate, hence there are procedural violations. Even according to the allegations of the complaint no offence is made out as against this petitioner and this petitioner raising slogans is not offence and in this case the defacto complainant is the Airport authority and the third respondent has no *locus standi* to object this petition. The learned

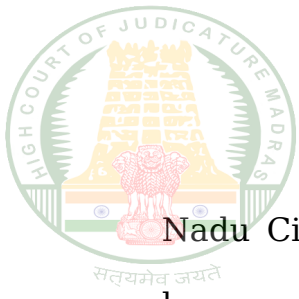


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counsel appearing for the petitioner has also produced the judgments of the Hon'ble Apex Court in the case of ***Keshav Lal Thakur .vs. State of Bihar*** and the order passed by this Court in the case of ***Arumugam .vs. The Inspector of Police, Kalapet Police Station, Puducherry District in CrI.O.P(MD) No.6609 of 2021.***

6. The learned counsel appearing for the intervenor would contend that the police failed to register case under the Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982, but , they registered case under Sections 290 of IPC and Section 75(1)(c) of Tamil Nadu City Police Act and they failed to invoke the provision of Section 3 of the Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982. Therefore the petition for quashing the charge sheet is liable to be dismissed. Even according to the First Information Report offences under Sections 290 of IPC and Section 75(1)(c) of Tamil Nadu City Police Act and also section 505(1)(b) of IPC are also registered. Since section 505(1)(b) of IPC is cognizable offence there is no irregularity in conducting investigation and filing of final report for the offence under Section 290 of IPC and section 75(1)(c) of the Tamil Nadu City Police Act as per section 155(4) of Cr.P.C.

7. The learned Additional Public Prosecutor appearing for the first respondent would contend that as far as section 75(1)(c) of Tamil



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Nadu City Police Act is concerned Thoothkudi District is not notified, however based on the complaint given by the second respondent, First Information Report has been registered and the case has been investigated and after investigation final report has been filed.

8. Already this Court has directed the Director of Civil Aviation to assist the Court in an effective manner and the learned counsel appearing for the Director of Civil Aviation also heard by this Court.

9. Heard both sides and perused the materials available on record.

10. On perusal of the record it is observed that the complaint has been lodged by the Airport authority, based on the complaint given by the second respondent i.e. former State President of BJP, Tamil Nadu. Then the first respondent registered case in Crime No.285 of 2018 for the offences under Sections 290 of IPC and 75(1)(c) of Tamil Nadu City Police Act, 1888. On perusal of the First Information Report, there is an inclusion of Section 505(1)(b) of IPC in the First Information Report by hand written. Other offences are in the printed form but the offence under Section 505(1)(b) of IPC has been inserted by handwritten. However the learned counsel for the petitioner brought to the knowledge of the Court that at the time of remand itself the learned Magistrate



refused to remand the petitioner for the offence under Section 505(1)(b) of IPC and remanded the petitioner for the offences under Sections 290 of IPC and 75(1)(c) of Tamil Nadu City Police Act,1888 and the same was also admitted by the counsel for the respondent. On seeing the complaint it seen that the petitioner shouted as “ Paasisa Ba.Ja.Ka. Aatchi Ozhiga”, i.e., Fascist B.J.P. down down. These words alone do not constitute any offence.

11. The learned counsel appearing for the intervenor brought to the knowledge of this Court by referring Section 3 of the Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982. It will not be applicable to the present facts of the case and mere uttering of words will not attract the provisions of the Act, which reads as follows:

3. Offence of committing violence on board an aircraft in flight, etc.—

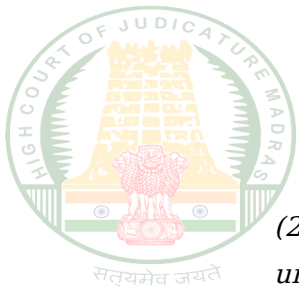
(1) Whoever unlawfully and intentionally—

(a) commits an act of violence against a person on board an aircraft in flight which is likely to endanger the safety of such aircraft; or

(b) destroys an aircraft in service or causes damage to such aircraft in such a manner as to render it incapable of flight or which is likely to endanger its safety in flight; or

(c) places or causes to be placed on an aircraft in service, by any means whatsoever, a device or substance which is likely to destroy that aircraft, or to cause damage to it which renders it incapable of flight, or to cause damage to it which is likely to endanger its safety in flight; or

(d) communicates such information which he knows to be false so as to endanger the safety of an aircraft in flight, shall be punished with imprisonment for life and shall also be liable to fine.



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(2) *Whoever attempts to commit, or abets the commission of, any offence under sub-section (1) shall also be deemed to be have committed such offence and shall be punished with the punishment provided for such offence.*

12. In this Case no any violence committed by the petitioner and mere uttering of the said word is not likely to endanger the safety of any aircraft and the complaint was not given by the aircraft alleging to attract the said provision. Even according to the complaint, the sections mentioned in the First Information Report are non cognizable offence and the procedures laid down under Section 155 of Cr.P.C have not been followed in this case. Once the magistrate rejected the remand for the offence under Section 505(1)(b) of I.P.C, it is the duty of the police to follow the procedure under Section 155 of Cr.P.C., which reads as follows:

"155. Information as to non-cognizable cases and investigation of such cases:

(1) When information is given to an officer in charge of a police station of the commission within the limits of such station of a non-cognizable offence, he shall enter or cause to be entered the substance of the information in a book to be kept by such officer in such form as the State Government may prescribe in this behalf, and refer, the informant to the Magistrate

(2) No police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial

(3) Any police officer receiving such order may exercise the same powers in respect of the investigation (except the power



to arrest without warrant) as an officer in charge of a police station may exercise in a cognizable case

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(4) Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are noncognizable”

13. On careful reading of the aforesaid provision it is clear that the informant has to refer to the Magistrate and no police can investigate a non cognizable offence without the order of a Magistrate having power to try such case or commit the case for trial under Section 155(2) of the Act. In this case the police have not followed the above procedures.

14. The learned counsel appearing for the petitioner relied on the following judgments:

i) ***Keshav Lal Thakur .vs. State of Bihar***, wherein it is held as follows:

“We need not go into the question whether in the facts of the instant case the above view of the High Court is proper or not for the impugned proceeding has got to be quashed as neither the police was entitled to investigate into the offence in question nor the Chief Judicial Magistrate to take cognizance upon the report submitted on completion of such investigation. On the own showing of the police, the offence under [Section 31](#) of the Act is non cognizable and therefore the police could not have registered a case for such an offence under [Section 154\(2\)](#) Dr. P.C. of course, the police is entitled to investigate into a non-cognizable offence pursuant to an order of a competent Magistrate under [Section 155\(2\)](#) Dr. P.C. but, admittedly, no such order was passed in the instant case. That necessarily means, that neither the police could investigate into the offence in question nor submit a report on which the



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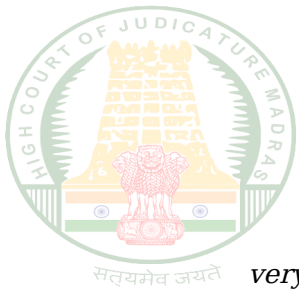
question of taking cognizance could have arisen. While on this point, it may be mentioned that in view of the proviso to [Section 2\(d\) Dr. P.C.](#), which defines 'complaint', the police is entitled to submit, after investigation, a report relating to a non-cognizable offence in which case such a report is to be treated as a 'complaint' of the police officer concerned, but that explanation will not be available to the prosecution here as that related to a case where the police initiates investigation into a cognizable offence - unlike the present one - but ultimately finds that only a non-cognizable offence has been made out.

ii) Arumugam .vs. The Inspector of Police, Kalapet Police Station, Puducherry District in Crl.O.P(MD) No.6609 of 2021,

wherein it is held as follows:

"5. Section 155 (1) of Cr.P.C makes it very clear that where information is received by an officer~in~charge of a Police station regarding the commission of a non~cognizable offence, he/she shall refer the informant to the learned Magistrate. There is a difference between referring the informant to the learned Magistrate and seeking permission from the learned Magistrate directly by the Investigating Officer. The Legislative mandate has to be followed scrupulously. This Court in similar circumstances, had held in A. Balarkrishnan vs. The Inspector of Police dated 28.09.2020 that officer~in~charge of Police Station has to refer the informant to the learned Magistrate and not just the information. The relevant portion is extracted herein for better understanding:

?9. In the above judgment the Section 155(i) and (ii) of Cr.P.C., clearly mandates that the Officer~in~Charge of the police station has to refer the informant and not the information alone to the Magistrate concerned. In the case on hand, neither the information regarding the commission of non~cognizable offence recorded in the register as mandated by the above said provision nor informant was referred to the concerned Magistrate. It is clear violation of the provision of Section 155 (i) and (ii) of Cr.P.C. Therefore, the FIR impugned in this petition cannot be sustained and it is liable to be quashed.?



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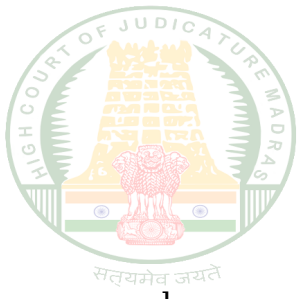
6. *The reading of Section 155(1) of Cr.P.C., would make it very clear that the Court mandates the Police Officer to refer the informant to the learned Magistrate. The reason is not far to seek. The learned Magistrate may, on such reference, either take the complaint on file or pass an order directing the Police to investigate the case. The Police officer cannot seek permission or an order from the learned Magistrate without referring the informant to the learned Magistrate. Therefore, the procedure adopted by the Police in seeking permission/order from the learned Magistrate to investigate non~cognizable offences without referring the informant and the orders passed by the learned Magistrate on such requests are against the provisions of the code. The procedure can be summarised as follows:*

(a) If the Police officer~in~charge of Police Station receives a complaint relating to non~cognizable offences, he/she shall refer the informant to the Magistrate. It is needless to say that the learned Magistrate can either take the complaint on file or direct an investigation by the Police.

(b) Section 155(2) Cr.P.C., provides that an order has to be passed by the learned Magistrate directing the Police to investigate and not mere permission. Hence, the learned Magistrate has to pass an order supported by reasons for allowing the Police to investigate. Cryptic orders such as "permitted" would not satisfy the provisions of the code.

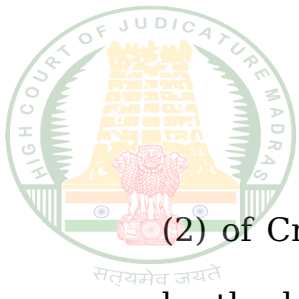
(c) The learned Magistrate shall not pass an order on an application by the Police for investigating non~cognizable offences without the informant being referred to him/her.

15. On careful reading of the said judgment it is clear that any investigation done in respect of non cognizable offence without following the procedure under Section 155 of Cr.P.C would render the final report illegal.



16. In the case on hand also the First Information Report has been registered under Section 290 of IPC and Section 75(1)(c) of Tamil Nadu City Police Act and these offences are non cognizable offences. However on perusal of the printed copy of the First Information Report it appears that 505(1)(b) of IPC was hand written. On perusal of the complaint no averments to attract the provision under Section 505(1)(b) of IPC. Further the learned Magistrate has also refused to remand the accused for the offence under Section 505(1)(b) of IPC. Therefore it appears that the offence under Section 505(1)(b) of IPC was included later with handwritten without any averments in the complaint to attract the offence under Section 505(1)(b) of IPC for the reasons best known to them.

17. At this juncture, the learned counsel appearing to the third respondent argued that since the offence under Section 505(1)(b) is cognizable offence the police can very well investigate the case as per Section 155(4) of Cr.P.C. As per Section 155(4) of Cr.P.C., Where a case relates to two or more offences of which at least one is cognizable, the case shall be deemed to be a cognizable case, notwithstanding that the other offences are non-cognizable. However the complaint does not disclose any cognizable offence and mere inclusion of cognizable offence for the reasons best known to them will not affect the procedures under Section 155 of Cr.P.C. Once the procedures under Sections 155(1) and



(2) of Cr.P.C are mandatory as per the above said judgments submitted by the learned counsel for the petitioner, mere inclusion of cognizable offence without any materials in the complaint, it does not mean that the procedures mandated under Section 155(1)and (2) of Cr.P.C would not attracted. Therefore mere inclusion of 505(1)(b) of IPC in the First Information Report is not sufficient to deviate from the procedure mandated under Sections 155(1)and (2) of Cr.P.C. Hence the arguments of the learned counsel appearing for the third respondent is not acceptable.

18. Further the learned counsel for the third respondent relied on the provisions under Section 2(d) of Cr.P.C., which reads as follows:

"2(d) complaint means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed the offence, but does not include a police report.

Explanation: *A report made by a police officer in a case which discloses, after investigation, the commission of a non cognizable offence shall be deemed to be a complaint; and the police officer by whom such report is made shall be deemed to be the complainant"*

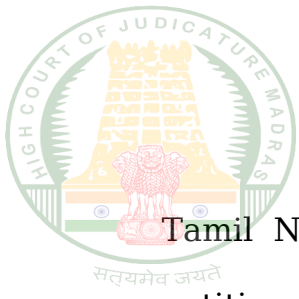
19. But in this case the police registered the First Information Report only for cognizable offence and Section 2(d) of Cr.P.C., is on different context and section 2(d) of Cr.P.C will not come into play in this case, because as per Section 2(d) of Cr.P.C. after investigation any report



relating to the cognizable offence in which code such a report is to be treated as a complaint of police officer concerned. But in this case the averments of complaint discloses the non cognizable offence. Thereby the arguments of the learned counsel appearing for the third respondent cannot be accepted.

20. In this case First Information Report has been registered under Sections 290 of IPC and Section 75(1)(c) of Tamil Nadu City Police Act and thereafter without any allegation in the complaint the Section 505(1)(b) of IPC was inserted by handwritten and the learned Magistrate also refused to remand under Section 505(1)(b) of IPC, thereby the police ought to have followed the procedures contemplated under Section 155 of Cr.P.C. The section 505(1)(b) of IPC was handwritten without any material to attract the said provision. Even according to the prosecution already at the time of remand itself the Section 505(1)(b) of IPC was rejected, while so thereafter the police have to obtain specific orders from the learned Magistrate to investigate the case for the offences under Sections 290 of IPC and 75(1)(c) of Tamil Nadu City Police Act. Therefore in this case the procedures under Section 155 of Cr.P.C have not been followed.

21. So far as section 75(1)(c) of Tamil Nadu City Police Act is concerned Thoothukudi District has not been notified to invoke the



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Tamil Nadu City Police Act and thereby also the charge against the petitioner is liable to be quashed.

22. The first respondent police have filed final report for the offences under Section 290 of IPC and Section 75(1)(c) of Tamil Nadu City Police Act. As far as offence under Section 290 of IPC is concerned as per averments of the charge sheet the petitioner raised slogan that "Fascist B.J.P down down" (பா.சி.சு. பா.ஜா.கா. ஆட்சி ஒழிக),. Now it is relevant to extract the provisions under Section 290 of IPC.

"290. Punishment for public nuisance in cases not otherwise provided for —
Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees

23. On careful perusal of the above section no any averments in the charge sheet to attract the said provision. Further the offence under Section 290 of IPC is punishable with fine which may extend to two hundred rupees.

24. The First Information Report and the charge sheet discloses that the petitioner only raised slogan as 'Fascist B.J.P' (பா.சி.சு. பா.ஜா.கா. ஆட்சி ஒழிக) and those words do not constitute any offence and it is trivial in nature . Therefore as discussed supra, the charge sheet in S.T.C.No. 324 of 2018 on the file of the learned Judicial Magistrate No.III, Thoothukudi is liable to be quashed.



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25. Accordingly this Criminal Original Petition is allowed and the proceedings in S.T.C.No.324 of 2018 on the file of the learned Judicial Magistrate No.III, Thoothukudi is quashed. Consequently connected miscellaneous petitions are closed.

16.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
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To

1. The Judicial Magistrate No.III, Thoothukudi
2. The Inspector of Police
Pudukottai Police Station,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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