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**(2007) 04 MAD CK 0215**

**In the Madras High Court**

**Case No :** Criminal Original Petition No. 6006 of 2006 and Criminal M. P. No. 1528 of 2006 and 1529 of 2006

Dr. M. Deivanayagam and Others

APPELLANT

Vs

The Sub Divisional Magistrate and The Union Territory of  
Pondicherry

RESPONDENT

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**Date of Decision :** 25-04-2007

**Acts Referred:**

Constitution of India, 1950 — Article 14, 19, 19(1), 25

Criminal Procedure Code, 1973 (CrPC) — Section 106, 107, 108, 109, 110

Penal Code, 1860 (IPC) — Section 124A, 153A, 153B, 292, 295A

**Citation :** (2007) 04 MAD CK 0215

**Hon'ble Judges :** S. Tamilvnan, J

**Bench :** Single Bench

**Advocate :** R. Gandhi, for R.G. Narendhiran, for the Appellant; M.R. Thangavel, GA (Pondy), for the Respondent

**Final Decision :** Allowed

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**Judgement**

S. Tamilvnan, J.—This Criminal Original Petition is directed against the impugned order dated 25.02.2006 made in M.C. No. 74/2005 u/s 151 @ 107 of the code of Criminal Procedure in and by which the first respondent has passed the, order u/s 111 Cr.P.C. as follows:

On 25.02.2006 at 09.30 hours at the corner of Sengundar Street and Maraimalai Adigal Salai, Pondicherry, the Counter Petitioners belonging to Hindu Viduthalai Munnani Iyyakkam were arrested to prevent them for conducting meeting at JVR Hall and proposed to give speech against the other religions which promote enmity between different religious groups and thereby caused disturbance to the public and free flow of Traffic.

Thus each one of you had committed criminal intimidation by doing wrongful activities and there is an apprehension of breach of peace in Orleanpet P.S. limits.

Each one of you are therefore called upon to show cause as to why you should not be ordered to execute a bond for Rs. 10,000/- to keep peace for a period of one year or such other period as may be decided by the undersigned on merits of your behaviour and the situation prevailing in the area from time to time.

2. The first petitioner herein has filed the accompanying affidavit for himself and on behalf of other petitioners, wherein he has stated that they formed an Association in the name of Hindu Madha Viduthalai Munnani (Hindu Religious Liberation Front) for the purpose of propagating the greatness of Tamil language, Tamil culture, and the great spiritual heritage of Hindu religion and also for the welfare of the people of all religions who are willing and interested to learn the concept of Hindu religion and also the Tamil language, Tamil people and Tamil culture, during January 2006. They were also taking steps to register a trust under the Indian Trust Act to promote the above said objects and they were also planning to start an Educational Trust for Vedas, Vedanthas and Agamas.

3. It has been averred in the petition that the first petitioner, Dr. N. Deivanayagam is the founder of the Front and he has obtained Doctorate on "Comparative study of Bible, Thirukkural and Saiva Sidhdhantha Sastras Fourteen" through University of Madras. His daughter, the second petitioner Dr. D. Devakala, the organizer for the Fronts also obtained a Doctorate on "Origin and Development of Tamil Bhakthi Movement through Madras University. Whiles, the petitioners had made arrangements to conduct a peaceful procession of devotees of Lord Siva and a seminar on 25.02.2006. The said seminar was scheduled to be conducted at JVR Hall, Orleanpet, Pondicherry with the prime motive of educating the general misconception prevailing among the public, that the terms "Hindusim" and "Hindu Religion" are one and the same. It was scheduled to start the procession of devotees of Lord Siva by chanting and singing songs at 8.30 a.m. on the aforesaid date from the statue of V. Subblah so as to reach the seminar hall at about 09.15 a.m. For the aforesaid purpose, the petitioners applied for permission from the Superintendent of Police, Pondicherry (North), but the same was orally denied by the said officer. Hence they cancelled the proposed procession and decided to conduct the seminar alone, at JVR Hall, Pondicherry as was scheduled. Whiles, when the seminar was about to be started, some policemen came to the said place and arrested the petitioners, even before they entered the seminar hall and also registered a case u/s 151 and 107 of Code of Criminal Procedure in Crime No. 62 of 2006 on the file of the second respondent and they were taken before the first respondent Sub-Divisional Magistrate, Pondicherry, North and they were detained from 09.30 a.m. to 05.00 p.m. in the evening.

4. As per the order passed by the first respondent, the petitioners were compelled to execute a bond for good behaviour for a sum of Rs. 10,000/- in form No. 12 under Sections 106 and 107 Cr.P.C. Accordingly, the first petitioner, for himself and on behalf of other petitioners, executed the bond, and the first respondent directed the petitioners to appear before the Court on 10.03.2006.

According to the petitioners, the impugned order is against Articles 14 and 25 of the Constitution of India and is a clear abuse of process of law, and an arbitrary and illegal action by the respondents and hence the same is sought to be quashed.

5. Mr. R. Gandhi, learned Senior Counsel appearing for the petitioners has submitted that the petitioners are highly educated and responsible persons and they had proposed to conduct the seminar in order to promote equity among people and they have faith in secularism. But the respondents without realising their responsibility of safeguarding the fundamental rights guaranteed under Articles 14, 19 and 25 of the Constitution of India, only with a view to prevent the seminar being conducted peacefully at the proposed venue, arbitrarily used their power and thereby arrested the petitioners and others and ill-treated them by detaining them in a fire service godown from 09.30 a.m. to 05.00 p.m., till in the evening. They were made to sit on the floor, where there was no proper ventilation. No chairs were provided though it was requested to provide a chair for the first petitioner, who was aged about 72 years. Even though there was no disturbance caused by the petitioners, to the public peace and tranquility, the second respondent with an ulterior motive arrested the petitioners and registered the case. The first respondent without considering the same, passed the impugned order, which is liable to be quashed.

6. According to the learned Senior Counsel, there is no prima-facie material in the averments available in the impugned order for the apprehension of public peace being disturbed. The learned Senior Counsel also drew the attention of this Court to the invitation of the proposed seminar wherein it has been stated that the seminar on would be conducted on 25.02.2006 by the Organizers Dr. M. Delvanayagam, M.A., Ph.D. and Dr. D. Devakala, M.A., M. Phil., Ph.D., the second petitioner herein. Inaugural address would be delivered by Mr. R. Siva, M.L.A. Of Dravida Munnettra Kazagam (D.M.K. Party). The first session of the seminar would be presided by Mr. Pon. Selvaraj, B.A.B.L., State Organiser, Pattali Makkal Party (P.M.K.). The second session would be presided by Mr. N. Manimaran, M.A., State Organiser, Marumalarchi Dravida Munnettra Kazhagam Party. The third session of the seminar would be presided by Mr. R. Gandhirasu, B.A.B.L., General Secretary of the Pondicherry State Congress Party. The fourth session would be presided by Mr. R. Viswanathan former Minister Communist Party of India and also member of the National Council of the said party and in their printed invitation, the participants had been asked to register their names to participate in the seminar, for which registration fee of Rs. 10/- has been prescribed for each participant.

7. Per contra, Mr. R. Thangavel, learned Government Advocate (Pondicherry) appearing for the respondents submitted that there was no illegality in the impugned order dated 25.02.2006 passed by the first respondent under Sections 151 and 109 of the Code of Criminal Procedure. In the impugned order, the first respondent has stated that the petitioners have committed criminal intimidation

by doing wrongful activities and there was an apprehension of breach of peace in Orleanpet P.S. limits. Hence on 25.02.2006 at about 09.30 hours at the Sengundar Street and Maraimalai Adigal Salai, Pondicherry, the petitioners were arrested so as to prevent them from conducting the seminar at JVR Hall and they had proposed to give speech against other; religions, which would promote enmity between different religious groups.

8. I have carefully considered the submissions made by the counsel on either side.

9. The learned Government Advocate representing the respondents has not disputed that the persons conducting the seminar and Presiding officers in the aforesaid sessions are leaders of various political parties and some of them highly educated. It is not in dispute that the Organisers viz., Hindu Madha Viduththalai Munnani (Hindu Religious Liberation Front) have conducted national and international seminars at various places throughout the country on the same subject. Even in the affidavit, the petitioners have averred the same. The contention of the learned Senior Counsel Mr. R. Gandhi that no other authorities in other states have prevented except the respondents in Puducherry State, the same was also not disputed by the learned Government Advocate.

10. No doubt u/s 151 of Code of Criminal Procedure, the first respondent is empowered to arrest any person in order to prevent the commission of any cognizable offence, even without an order from a Magistrate.

11. It is relevant to mention Section 108 of the Code of Criminal Procedure, which reads as follows:

Security for good behaviour from persons disseminating seditious matters: (1) When an Executive Magistrate receives information that there is within his jurisdiction any person who, within or without such jurisdiction,-

(i) either orally or in writing or in any other manner, intentionally disseminates or attempts to disseminate or abets the dissemination of,-

a) any matter the publication of which is punishable u/s 124A or Section 153A or Section 153B or Section 295A of the Indian Penal Code (45 of 1860), or

b) any matter concerning a Judge acting or purporting to act in the discharge of his official duties which amounts to criminal intimidation or defamation under the Indian Penal Code,

(ii) makes, produces, published or keeps for sale, imports, exports, conveys, sells, lets to hire, distributes, publicly exhibits or in any other manner puts into circulation any obscene matter such as is referred to in Section 292 of the Indian Penal Code (45 of 1860), and the Magistrate is of the opinion that there is sufficient ground for proceeding, the Magistrate may, in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond, with or without sureties, for his good" behaviour for such period,

not exceeding one year, as the Magistrate thinks fit.

(2) No proceeding shall be taken under this Section against the editor, proprietor, printer or publisher of any publication registered under, and edited, printed published in conformity with, the rules laid down in the Press and Registration of Books Act, 1867 (25 of 1867), with reference to any matter contained in such publication except by the order or under the authority of the State Government or some officer empowered by the state Government in this behalf".

12. Section 111 of the Code of Criminal Procedure reads as follows:

Order to be made: When a Magistrate acting u/s 187, Section 108, Section 109 or Section 110, deems it necessary to require any person to show cause under such suction, he shall make an order in writing, setting forth the substance of the information received, the amount of the bond to be executed, the term for which it is to be in force, and the number, character and class of sureties (if any) required.

13. It cannot be disputed that no arbitrary action can be taken u/s 151, 108, 111 of the Code of Criminal Procedure or other provisions of law, violative of the fundamental rights guaranteed under Articles 14, 19(1)(a) and (b) and 25 of the Constitution of India, only reasonable restrictions can be imposed. Every citizen of this Country is entitled to freedom of conscience which includes right to freely profess, practise and propagate their religion and the Government can make appropriate law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice. As far as the sikh religion is concerned, even the wearing and carrying of kirpans shall be deemed to be included in the provision of said religion.

14. It is seen from the impugned order that though the first respondent has mentioned Section 151 and 108 of the Code of criminal procedure, there is no prima-facie averment or material or circumstance with regard to any commission of cognizable offences by the petitioners. It is not the case of the respondents that the petitioners were assembled with any weapon or damaged any public or private property or uttered any slogans against any religion in the name of their organisation.

15. As contended by the learned Senior Counsel, if the seminar was against secularism or to abuse some other religions or against some section of the same religion, it would not be possible for leaders of various political parties and MLAs and certain state level leaders of recognised political parties to participate in the seminar. Similarly, it is not disputed by the learned Government Advocate that the first and second petitioners are well known scholars with Doctorate degree obtained through the reputed University of Madras on comparative study of "various religions" with Salva Sidhdhantha Sastras. Further, as per the schedule, the seminar had been arranged only in a Hall for which registration fee of Rs. 10/- per each participant has been prescribed. Therefore, the bald reason assigned in the impugned order by the respondents that the petitioners had

committed criminal intimidation by doing wrongful activities and that there was apprehension of breach of peace in Orleanpet Police Station limits cannot be accepted. In any democratic country, following the principle of secularism, freedom of speech and expression with reasonable restriction is paramount. Under Article 19(1)(a) and (b), all citizens shall have the right to freedom of speech and expression and to assemble peaceably and without arms subject to reasonable restriction. Here on a perusal of the impugned order and the material available in the typed set of papers, I am of the view that the impugned order has been passed without realising the importance of the fundamental rights guaranteed under Articles. 14, 19(1)(a) and (b) and 25 of the Constitution of India in an arbitrary manner so as to prevent the petitioners from exercising their right to profess, practise and propagate their religious ideas, which would no way be detrimental to the ideology of other religions.

16. Even as per the impugned order, admittedly, no complaint was given by any other religious groups, or persons. Therefore, I am of the considered view that the action taken by the respondents are baseless, arbitrary and against the fundamental rights guaranteed under the aforesaid provisions of Constitution of India and accordingly the same is liable to be quashed as unconstitutional.

17. In support of his contention, the learned senior counsel relied on the decision in the case of Palani and Ors. v. The Inspector of Police, Pudhukottai Police Station, Pudhukottai reported in 2006(3) CTC 792.

18. In the case of Somasundaram and 10 Ors v. The Revenue Divisional Officer, Dharapuram and Anr. reported in 2002 (1) CTC 72, it has been stated in paragraphs 6 and 7 as follows:

6. ...In the present case, as already seen, the orders passed u/s 111 of Cr.P.C. do not set forth the substance of information received by the Sub-Divisional Magistrate and the nature of the case the petitioners have to meet before entering appearance. Lack of information in the show cause order had caused prejudice to the petitioners, since they were not in a position to challenge the same.

7. The Sub-Divisional Magistrate has to satisfy himself about the need to issue a show cause order and the order must reflect the application of mind by the Magistrate to the facts placed before him. The impugned orders do not indicate application of mind by the Magistrate and they do not satisfy the double test much less any one of them and hence they are liable to be quashed.

In the instant case also, there is no details available in the impugned order as to how the first respondent had come to the conclusion that the petitioners had committed criminal intimidation of doing wrongful activities and how there was apprehension for breach of public peace, for the averments in the impugned order, there is no iota of material to prima-facie substantiate available on record.

19. Had the seminar been convened with a view to promote enmity between

different religious groups causing disturbance to the public and free flow of traffic, it could not be possible for various leaders of different political parties to be participants to the seminar. Freedom of speech and expression and freedom to assemble peaceably and without arms guaranteed under Article 19(1)(a) and (b) and the religious freedom under Article 25 are paramount, though subject to reasonable restrictions. The authorities cannot impose unreasonable restrictions so as to encroach the fundamental rights of a citizen. Here in the instant case, it is seen that without prima-facie material, the second respondent had arrested the petitioners and the first respondent passed the impugned order without any legal basis and supporting materials and therefore, the impugned order is liable to be quashed. I am of the considered view that the plea of the learned Government Advocate that the relief sought for has become infructuous, cannot be accepted on the facts and circumstances of this case.

20. Further it has been averred as follows by the Sub divisional Magistrate, North, as per Form No. 12 executed before him in the name of Bond for Good Behaviour:

Whereas, I, Dr. Deivanayagam (75) S/o Munisamy, residing at No. 278, Konur High Road, Iyyanavaram, Chennai, Tamil Nadu have been called upon to enter into a bond to be of good behaviour to Government and all the citizens of India for the term of six months or until the completion of the enquiry in the matter of Cr. No. 62/2006 u/s 151 @ 107 Cr.P.C. Of Orleanpet Police Station now pending in the court of the Sub-Divisional Magistrate, Pondicherry. I hereby hind myself and on behalf of 27 others to be of good behaviour to Government and all the citizens of India during the said enquiry and in case if any making default therein, I bind myself to forfeit to Government a sum of Rs. 10,000/-.

The learned Senior Counsel represents that in view of the execution of the aforesaid bond, the first petitioner herein was made to deposit a sum of Rs. 10,000/- and accordingly, he deposited the said amount.

21. In the result, the criminal original petition is allowed and the impugned order is quashed. The respondents are directed to refund the amount if any deposited or paid by the petitioners herein, forthwith. However, there will be no order as to costs. Consequently, connected miscellaneous petitions are closed.