
(1999) 07 MAD CK 0122

In the Madras High Court

Case No : Writ Petition No. 16009 of 199I and W.M.P. No. 24139 and 24140/91

Valampuri John

APPELLANT

Vs

State of Tamilnadu and Others

RESPONDENT

Date of Decision : 08-07-1999

Acts Referred:

Constitution of India, 1950 — Article 226
Criminal Procedure Code, 1973 (CrPC) — Section 165, 95

Citation : (1999) 07 MAD CK 0122

Hon'ble Judges : N.K. Jain, J

Bench : Single Bench

Advocate : M. Ravindran, for V. Viswanathan, for the Appellant; T.R. Rajagopalan, A.A.G. Assisted by T. Kokilavani, Government Advocate on behalf of Respondents, for the Respondent

Final Decision : Dismissed

Judgement

N.K. Jain, J.—It is alleged that the Petitioner is the editor of Tamil Weekly "Rajarishi" which was launched on 7.11.1991 and one Robin is the publisher. The first issue of the magazine was released on 7.11.1991. The second issue dated 15.11.91 was made ready for the release on 13.11.1991. It is alleged that on 13.11.1991 the fourth Respondent, alongwith other police officials, visited the house of the Petitioner, without any warrant, despite the protest and questioned him regarding the issuance of the said issue dated 15.11.1991. However, they left the house of the Petitioner, saying that they would seize all such copies of the said issue, as nothing was found. It is also submitted that the police officials warned the Petitioner as not to write the life story of the former Chief Minister of Tamil Nadu. However, it is submitted that on 15.11.1991, in all centers of Tamil Nadu, the entire published magazines of the "Rajarishi" were seized. Hence, he filed this writ petition praying for the issue of a writ of mandamus for-bearing the Respondent from printing, publishing, distributing and selling of Tamil Weekly Magazine "Rajarishi". It is also prayed that the Respondents be directed to return the copies of the Tamil Weekly magazine "Rajarishi".

2. Counter has been filed denying the allegations as alleged on a complaint received prior to publication and on finding reasons to believe that the magazine contained denigrating writings against the judiciary also and allowing the same will disturb the public tranquility which is prevailing in the state, it was seized from all centres of the State. The question of invoking Section 95 Code of Criminal Procedure will not arise, as it was only a Seizure and no confiscation took place. It is further submitted that the name of the publisher has also not been given correctly and this fact was suppressed and on the account of the pending criminal proceedings, this writ petition is not maintainable and the same may be dismissed.

3. The main grievance of the Writ Petitioner is that the act of conducting search at the residence of Petitioner, by the Respondents 4 and 5, is illegal. The seizure, of magazine at different centres, without invoking Section 95 Cr.P.C. i.e., without warrant, is bad. Thus, it has infringed the freedom of speech of writing, publishing, and by impounding the copies, the Petitioner incurred heavy monetary loss. Therefore, necessary direction may be given to return the copies of the magazine dated 15.11.1991.

4. Learned Government Advocate reiterated the allegations made in the counter affidavit. It is argued that only on receipt of the complaint, the house of the Petitioner had been searched, that the Petitioner has wrongly given the name and the address of the publisher and that the provisions of the Criminal law had been invoked only according to law. It is further argued that only seizure had been ordered finding that the materials show that allowing the publication of the magazine would cause enmity between different religious persons. It is further stated that invoking of Section 95 Code of Criminal Procedure does not arise, as only seizure was ordered and nothing was ordered to be confiscated.

5. I have heard the learned Counsel appearing on both sides and perused the materials including affidavit, counter affidavit and reply affidavit placed before me. I have perused the relevant provisions of the Code of Criminal Procedure and Indian Penal Code.

6. It is true that everybody is having the freedom of speech but the same should be said or published or proved in a manner known to law. It should be within the framework of the established provisions of law and such freedom should not give any room for hatredness among different religious people. In the instant case, as per the allegations contained in the counter and the argument, they have never forfeited the said. magazine, but have only seized the same. So in my mind, in the facts of the given case, the question of invoking Section 95 Code of Criminal Procedure .does not arise and no direction as prayed for, can be granted. It is also to be seen that on account of non-functioning of the address and name of the publisher of the magazine which is required as per the provisions of law and on investigation and on receipt of a complaint clear reason is shown to the Respondents to believe that the magazine contained materials prohibited by the provisions of law and also against judiciary, which would disturb public tranquility

and create enmity between different religious people. Therefore, I am of the view that the Respondents have shown that they had reasons to believe, prima facie that the said magazine contained certain items which would result in taking action u/s 165 Code of Criminal Procedure F.I.R. also had been launched and investigation is pending. Under the circumstances, no case is made out to interfere with the same, in exercise of writ jurisdiction under Article 226 of the Constitution of India and no relief can be granted. The writ petition is therefore liable to be dismissed and accordingly dismissed. However, it is made clear that any observations made in this writ petition will not prejudice the case of the either side, in the pending criminal case. No order as to costs. Connected miscellaneous petitions are dismissed.