



Crl.O.P(MD)No.17759 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)No.17759 of 2021

and

Crl.M.P.(MD)No.9690 of 2021

Kan.Ilango

... Petitioner

Vs.

1.State represented by
The Inspector of Police,
Rameshwaram Temple Police Station,
Rameshwaram,
Ramanathapuram District.

2.Sundaravaathyar

... Respondents

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records pertaining to the First Information Report in Crime No.3 of 2018 dated 26.01.2018 on the file of the respondent No.1 police for alleged offences under Sections 147, 447, 294(b) and 506(i) of IPC and quash the same as illegal as far as the petitioner is concerned.

For Petitioner : Mr.T.Thirumurugan

For Respondents : Mr.T.Senthil Kumar,
Addl. Public Prosecutor for R1.

**ORDER**

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On 24.01.2018, the then Tamil Nadu Governor Shri.Banwarilal Purohit released a Tamil-Sanskrit Dictionary at a function held in Music Academy, Chennai in the presence of the Pontiff of the Kanchi Kamakoti Peetam Shri.Vijayendra Saraswathi Swamigal. When the invocation song to Mother Tamil, “Tamil Thai Vaazhthu” was played, the pontiff remained seated. This triggered considerable outrage. Lyricist Vairamuthu remarked “*National Anthem is to respect the country, Tamil Anthem is to respect Tamil language. Both ought to be respected equally*”. Even the Swarajya magazine which is known to hold right-wing leaning views carried an editorial “*Stand up and Be Counted : Kanchi Mutt Seer Has No Excuse To Disrespect Tamil State Song*”. It went to the extent of commenting that the visuals of the pontiff defiantly sitting during the singing of Tamil Thai Vaazhthu comes across as disrespectful, arrogant and quite unfortunate. It also demanded an unconditional apology.

2.Kan.Ilango is presently associated with “Naam Thamilar Party”. He was earlier associated with “Tamilar Desiya Munnani”. Under his leadership, a dozen persons assembled



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before the branch of Kanchi Mutt at Rameshwaram. Provocative slogans were raised. They allegedly entered the Mutt premises wearing footwear. When the defacto complainant who was the Manager of the Mutt protested, he was criminally intimidated. Hence, Crime No.3 of 2018 was registered on the file of the Rameshwaram Temple Police Station for the offences under Sections 147, 447, 294 (b) and 506(i) of IPC.

3.To quash the said FIR, this Original Petition came to be filed. The learned counsel for the petitioner submitted that the petitioner is ready to make amends for his conduct. He approached the defacto complainant with a letter expressing his regret. The defacto complainant has also informed the court that the petitioner was well known to him and that the matter can be treated as closed.

4.This case did have some hilarious moments. To my question as to whether he was a Tamil activist, the petitioner answered in the affirmative. I thereupon called upon him to recite any five Thirukkural couplets. While கற்க கசடற came out smoothly, உழுதுண்டு வாழ்வாரே வாழ்வார் was recited with some difficulty. He could not travel further. Though I did embarrass



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the petitioner, he did come out as a well-meaning individual with a broad social outlook. The petitioner and the defacto complainant do not appear to have any ill-feeling or rancour towards each other. The whole occurrence appeared to be more of an emotional outburst.

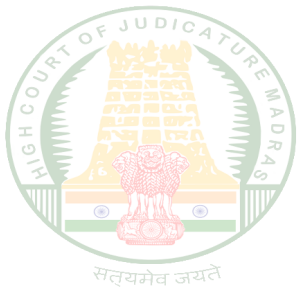
5.I cannot help asking as to whether the whole controversy was justified in the first place. "Vide G.O.Ms.No.1393, dated 17.06.1970, the Government of Tamil Nadu directed that "நீராருங் கடலுடுத்த" song from "Manonmaneeyam" written by Thiru.P.Sundaram Pillai should be sung as a prayer song at the commencement (and not at the end) of all functions organized by Government Departments, Local Bodies and Educational Institutions. Memo No.3584/70-4 dated 23.11.1970 was issued directing that the above prayer song should be sung in the Raaga "Mohanam" and in the "Thisra Thaala" as composed by Thiru.M.S.Viswanathan. Thus, Tamil Thai Vaazhthu is a prayer song and not an anthem.

6.Section 3 of the Prevention of Insults to National Honour Act, 1971 states that whoever intentionally prevents the singing of the Indian National Anthem or causes disturbance to any



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assembly engaged in such singing shall be punished with imprisonment which may extend to three years, or with fine, or with both. Article 51A(a) of the Constitution mandates that it shall be the duty of every citizen of India to respect the National Flag and the National Anthem. When three school children who were adherents of Jehovah's Witnesses, a Christian denomination, refused to sing the National Anthem, they were expelled from the school. The matter reached the Apex Court. In ***Bijoe Emmanuel vs. State of Kerala (1986) 3 SCC 615***, the Hon'ble Supreme Court struck down the expulsion order and directed their re-admission in the school. The Supreme Court noted that the children while refusing to sing had stood up respectfully. It was noted that there is no provision of law which obliges anyone to sing the National Anthem. The Hon'ble Judges did not think it is disrespectful to the National Anthem if a person who stands up respectfully when the National Anthem is sung does not join the singing. After a discussion regarding the right to freedom of conscience and freedom to profess, practice and propagate religion the court concluded on this note “our tradition teaches tolerance ; our philosophy preaches tolerance; our Constitution practises tolerance ; let us not dilute it”.



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7.The Ministry of Home Affairs of the Government of India had issued an order dated 05.01.2015 that whenever the National Anthem is sung or played, the audience shall stand to attention. In ***Shyam Narayan Chouksey v. Union of India (2017) 1 SCC 421***, the Hon'ble Supreme Court directed that all the cinema halls shall play the National Anthem before the feature film starts and all present in the hall are obliged to stand up to show respect to the National Anthem. However, the original directions were modified and made optional and not mandatory [(2018) 2 SCC 574].

8.It has already been noted “Tamil Thai Vaazhthu” is a prayer song and not an Anthem. There is no statutory or executive order requiring the attendees to stand up when Tamil Thai Vaazhthu is sung. But highest reverence and respect ought to be shown to Tamil Thai Vaazhthu. It is true that the members of the audience conventionally stand up whenever Tamil Thai Vaazhthu is sung. But the question is whether this is the only mode in which respect can be shown. When we celebrate pluralism and diversity, insisting that there can be only one way of showing respect reeks of hypocrisy. One should not forget that a Sanyasi occupies a special place in our social



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and cultural life. Emperors and Kings have prostrated before Sanyasis and Fakirs. In the epics whenever a Sanyasi entered the royal court, the King will step down from his throne and pay his respects. In ***His Holiness Sri La-Sri Shanmugha Desika Gnanasambanda Paramacharya Swamigal v. Controller of Estate Duty (1985) 153 ITR 390***, Their Lordships Ramanujam and Fakkir Mohammed, JJ. held that becoming a Sanyasi is renunciation of one's worldly life and possessions, and neither the ancient texts nor the judicial precedents refer to the concept of obligations. On becoming a Sanyasi, the person suffers a civil death. He must be taken to have a re-birth. A Sanyasi primarily leads a life of piety. When in prayer, he is invariably found in a meditative posture. Since Tamil Thai Vaazhthu is a prayer song, a Sanyasi is certainly justified in sitting in a state of meditation. In the instant case, the pontiff is seen sitting in a Dhyana posture with his eyes closed. It was his way of expressing his reverence and respect for Mother Tamil.

9. Since the petitioner and the defacto complainant have shaken hands, no purpose will be served in keeping the impugned prosecution alive. The impugned FIR stands quashed. The benefit of this order will enure in favour of the non-



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petitioning accused also. This Criminal Original Petition is allowed on these terms. Consequently, connected miscellaneous petition is closed.

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Index:Yes/No
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:

The Inspector of Police,
Rameshwaram Temple Police Station,
Rameshwaram,
Ramanathapuram District.



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G.R.SWAMINATHAN, J.

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