

Crl.O.P.No.29201 of 2018
and
Crl.M.P.No.17106 of 2018

N.ANAND VENKATESH,. J

Heard the learned counsel for the petitioner, and the learned Public Prosecutor appearing on behalf of the respondent Police and also the 2nd respondent who appeared in person.

2.The FIR has been registered against this petitioner for an offence under Section 153, 153 A(1) (a), 505 (1)(b) & 505 (1) (c). The complaint has been given by the 2nd respondent who claims himself to be a social activist. The allegation made in the complaint is that this petitioner is the director of a Movie named "Sarkar". In the said Movie, there is a scene wherein mixie and grinders given as a freebie by the Government, is thrown into fire. This scene according to the complainant, was intentionally shown in the Movie in order to defame the Government and with an intention to destroy the solidarity and integrity of the nation. This according to the 2nd respondent will create law and order problem and there is an intention to wage war against the Government of Tamil Nadu and therefore the petitioner must be considered to be an anti

nationalist. The complaint further states that the particular scene has deeply affected the sentiments of the people of Tamil Nadu who were given freebies by various governments in order to help the people.

3. Based on this complaint, an FIR came to be registered immediately for the above said offences.

4. The petitioner admittedly is the director of the Movie named "Sarkar". This Movie has been issued certificate by the Central Board of Film Certification on 25.10.2018. The Hon'ble Supreme Court in the judgment in ***Viacom 18 Media Private Limited .Vs. Union of India***, reported in [2018 (1) SCC 761], which dealt with the release of the film "Padmaavat" has held as follows:

"It has to be borne in mind, expression of an idea by any one through the medium of cinema which is a public medium has its own status under the Constitution and the Statute. There is a Censor Board under the Act which allows grant of certificate for screening of the movies. As we scan the language of the Act and the guidelines framed thereunder it prohibits us and presentation of visuals or words contemptuous of racial, religious or other groups. Be that as it may. As advised at present once the Certificate has been issued, there is

prima facie a presumption that the concerned authority has taken into account all the guidelines including public order."

5.From the above judgment, it is clear that once a Certificate is issued by the CBFC, there is a *prima facie* presumption that the authority has taken into account all the guidelines including public order. Admittedly, CBFC in this case has granted a Certificate for the release of the Movie "Sarkar" on 25.10.2018.

6.The complaint only reflects the feeling of the 2nd respondent by watching the Movie. The impression created to the 2nd respondent by watching a Movie cannot be the basis for registering an FIR by the respondent Police and the respondent Police must be satisfied about the various offences stated in the FIR, to have been committed by the petitioner. In the considered view of this Court the allegations made in the FIR does not prima facie make out any offence under Section 153, 153A(1)(a), 505(1)(b) and 505(1)(c).

7.Giving freebies to the people is more a policy of the Government. Any policy of the Government is subject to public scrutiny

and every citizen of the country is entitled to have their own opinion about a policy. The director of the Movie has felt strongly against giving freebies to the people. This has been shown as an expression in the Movie in the particular scene which is in question. There was no public uproar by the general public after the Movie was released. Only the political parties commented upon the issue taken up in the Movie and criticized it. Some of the party cadres even went to the extent of indulging in violence and caused disruption in many theatres in which this Movie was released.

8. The petitioner is a citizen of this country and has every right to express his opinion about a Government Policy. This right is protected under Article 19(1)(a) of the Constitution of India. The content of the expression "freedom of speech and expression" has three steps which are fundamental in understanding the reach of this most basic of human rights. The first is discussion, the second is advocacy, and the third is incitement. Mere discussion or even advocacy of a particular cause, howsoever unpopular is at the heart of Article 19(1)(a). It is only when such a discussion or advocacy reaches the level of incitement, Article 19(2) kicks in. The commitment of freedom of expression demands that it cannot be suppressed unless the situations created by allowing the

freedom are pressing and the community interest is endangered.

9.The cinema as a medium is always understood as a exaggerated version of the reality. Therefore, the expressions made in a Movie on a particular issue as projected in the Movie, always has an element of exaggeration. This is traditionally done in order to catch the attention of the viewer. In this Movie the petitioner has expressed his opinion on freebies given by the Government, in a cinematic way. Each viewer will get a different experience after watching the particular scene in question. Some of them may support the opinion expressed by the director and some may oppose it. If every person, who is not in agreement with the issue projected in the Movie, starts giving complaint against the director and an FIR comes to be registered on each complaint, it will sound the death knell to the mother of all other liberties namely; the freedom of speech and expression.

10.It will be relevant to quote the judgment of the Hon'ble Supreme Court in ***S.Rangarajan .Vs. P.Jagjivan Ram and Others*** reported in **[1989 2 SCC 574]** wherein the Hon'ble Supreme Court has held as follows:

"However, the producer may project his own message which the others may not approve of it. But he has a right to "think out" and put the counter-appeals to reason. It is a part of a democratic give-and-take to which one could complain. The State cannot prevent open discussion and open expression, however hateful to its politics. Everyone has a fundamental right to form his own opinion on any issue of general concern. He can form and inform by any legitimate means. The democracy is a government by the people via open discussion. The democratic form of government itself demands its citizens an active and intelligent participation in the affairs of the community. The public discussion with people's participation is a basic feature and a rational process of democracy which distinguishes it from all other forms of government".

11. This case clearly shows a knee jerk reaction on the part of the respondent Police to have registered an FIR against the petitioner, even without satisfying themselves whether the complaint has made out any offence against the petitioner. If FIRs are permitted to be registered in such a casual fashion, there is a great peril to an artist whose creativity will be stifled and the hard labour of our freedom fighters and makers of our Constitution will go down the drain. Registration of an FIR in such a cavalier fashion by the Police will directly touch upon the personal liberty

of a personm guaranteed under Article 21 of the Constitution.

12.A *prima facie* case has been made out and there shall be a stay of investigation in Cr.No.509 of 2018, pending on the file of the 1st respondent Police, pending disposal of this criminal original petition.

Post this case after six weeks.

14.12.2018

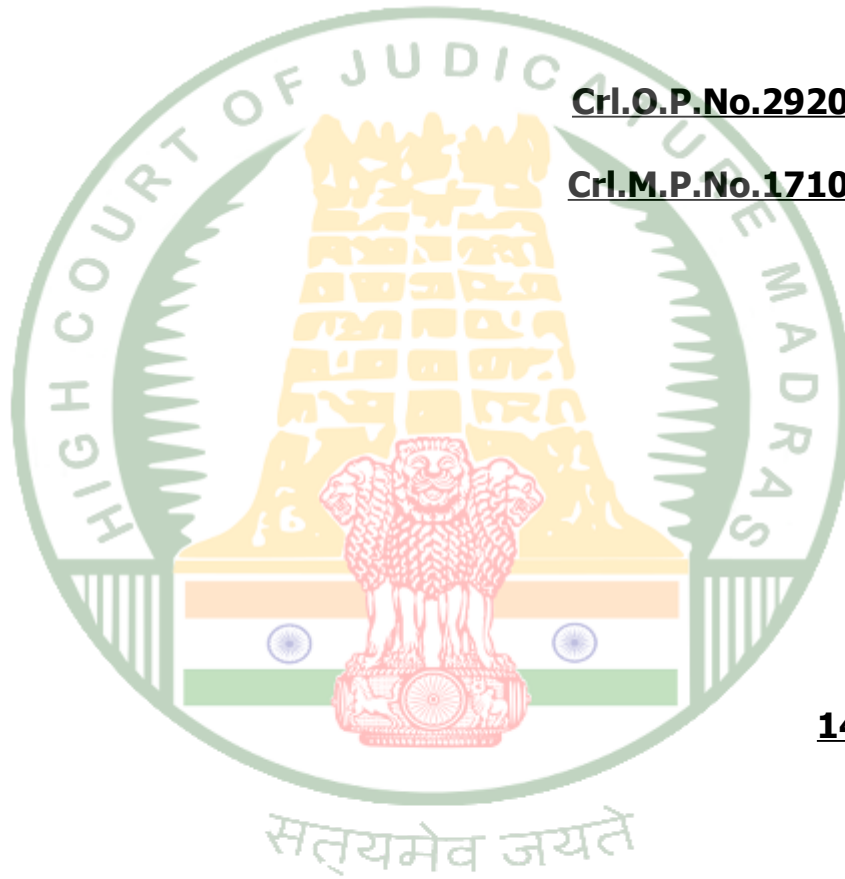
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