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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 20/04/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Cr1.OP(MD)No.6272 of 2023

and

Cr1.MP(MD)Nos.5477 and 5479 of 2023

S.Muthukrishnan : Petitioner/A6

Vs.

1.The Inspector of Police,
Alangudi Police Station,
Pudukottai District.
(Crime No.175 of 2009) : R1/Complainant

2.M.Gunasekaran,
Sub Inspector of Police,
Alangudi Police Station,
Pudukottai District. : R2/De-facto Complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records relating to the proceedings in CC No.76 of 2019 on the file of the District Munsif-cum-Judicial Magistrate, Alangudi, Pudukottai District and quash the same as it has no prima facie as against the petitioner.

For Petitioner : Mr.G.Radhakrishnan

For Respondents : Mr.S.Manikandan
Government Advocate
(Criminal side)

**ORDER**

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This criminal original petition is filed seeking quashment of the case in CC No.76 of 2019 on the file of the District Munsif-cum-Judicial Magistrate, Alangudi, Pudukottai District

2.The case of the prosecution in brief:-

On 25/04/2009 at about 07.00 pm, the de-facto complainant along with the police team were on patrol duty on the eve of parliament election, at that time, the accused persons were found in uniform dress, which contains the slogans, found issuing pamphlets to condemn the killing of the Tamil people by the Srilangan Army and also raised slogans against some of the political leaders, who are supporting the Srilankan Army for killing the innocent Tamil people in Srilanka. On the basis of the above said occurrence, *suo motu* complaint was registered in Crime No.175 of 2009 for the offence under sections 147, 504 and 505(2) IPC. After completing the formalities of investigation, final report was filed and it was taken cognizance in CC No.76 of 2019 by the District Munsif-cum-Judicial Magistrate, Alangudi, Pudukottai District.



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3. Seeking quashment of the same, this petition has been filed mainly on the ground that none of the allegations mentioned in the final report attract any of the ingredients of the offences alleged.

4. Heard both sides.

5. Reading of the final report shows that on the particular date of the occurrence, the accused persons gathered in the place of occurrence, raised slogans against the Srilankan Army and some of the political leaders alleging that they are supporting the Srilankan Army to kill the innocent Tamil people in Srilanka. This shows that the above said protest was undertaken by the petitioner and others, when the civil war was at high peak in Srilanka.

6. Allegations and counter allegations have been made against each other stating that they are responsible for the above said killing and the Srilankan Army action. Through out Tamil Nadu protests were made. It is well known fact, which was prevailing at that time.



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7.Right of protest and agitation, demonstration, condemning the attack on the Tamil innocent people, demanding action and making allegations against the other political parties are the basic and democratic right of every citizen. It is punishable only if turns violent or made with an intention to create enmity between two or religions people. But here, reading of the above said final report, it is not even remotely indicate the intention on the part of the protestors.

8.Further, it is seen that they did not make any damage to any public or private properties. They did not involve in any violative intention also. For attracting section 147 IPC, the ingredients of section 141 IPC must be satisfied.

9.Section 141 IPC reads as under:-

"141. Unlawful assembly.—An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is—

(First) — To overawe by criminal force, or show of criminal force, 1[the Central or any



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State Government or Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or

(Second) – To resist the execution of any law, or of any legal process; or

(Third) – To commit any mischief or criminal trespass, or other offence; or

(Fourth) – By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

(Fifth) – By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.—An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.



10. Section 146 defined rioting, which reads as under:-

"146. Rioting.—Whenever force or violence is used by an unlawful assembly, or by any member thereof, in prosecution of the common object of such assembly, every member of such assembly is guilty of the offence of rioting".

11. Section 147 imposes punishment for riots, which reads as under:-

"Whoever is guilty of rioting, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

12. Here absolutely, there is no allegation to the effect that the petitioner used the force in any manner or involved in any vindictive activity. So the ingredients of the offence under section 146 IPC are not attracted.



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13. Section 504 IPC reads as follows:-

"504. Intentional insult with intent to provoke breach of the peace.—Whoever intentionally insults, and thereby gives provocation to any person, intending or knowing it to be likely that such provocation will cause him to break the public peace, or to commit any other offence, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

14. So as mentioned earlier, absolutely, there is no intention on the part of the petitioner, either to violate or to provoke any person to break the public peace or to commit any offence. It was a peaceful demonstration or protest, wherein some dresses containing some slogans and stickers used.

15. Section 505(2) IPC reads as under:-

"505. Statements conducing to public mischief.—

(1)...

(a)...

(b)...

(c)...



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(2) Statements creating or promoting enmity, hatred or ill-will between classes.-

Whoever makes, publishes or circulates any statement or report containing rumour or alarming news with intent to create or promote, or which is likely to create or promote, on grounds of religion, race, place of birth, residence, language, caste or community or any other ground whatsoever, feelings of enmity, hatred or ill-will between different religious, racial, language or regional groups or castes or communities, shall be punished with imprisonment which may extend to three years, or with fine, or with both.

16. So as mentioned earlier, the observation that has been made by this court in the previous paragraph is sufficient enough to find out that even the ingredients of the offence under section 505(2) IPC are not attracted, at best, the de-facto complainant ought to have taken preventive measures against the petitioner and others. So none of the ingredients mentioned in the final report attract any of the ingredients as noted above. So, the continuation of the prosecution will amount to abuse of process of the court and law.



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17. For the above said reasons, this criminal original petition is **allowed**. The proceedings in CC No.76 of 2019 on the file of the District Munsif-cum-Judicial Magistrate, Alangudi, Pudukottai District is hereby quashed as against the petitioner. Consequently, connected Miscellaneous Petitions are closed.

20/04/2023

Index:Yes/No
Internet:Yes/No
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To.

1. The District Munsif-cum-Judicial Magistrate,
Alangudi, Pudukottai District.
2. The Inspector of Police,
Alangudi Police Station,
Pudukottai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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