



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.11.2017

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THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P. (MD) No.6817 of 2011

and

M.P. (MD) No.1 of 2011

K.Karunakaran

... Petitioner/Accused No.39

Vs.

1.The Inspector of Police,
Thiruchendur Police Station,
Thiruchendur.
(In Crime No. 26/2011)

... 1st Respondent / Complainant

2.L.Ganesan

... 2nd Respondent/Defacto
Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pending on the file of the Judicial Magistrate, Thiruchendur in S.T.C.No.500 of 2011 and quash the same.

For Petitioner : Mr.C.Arul Vadivel Alias Sekar
For R1 : Mr.K.Anbarasan
Government Advocate (Criminal side)
For R2 : No appearance

O R D E R

The petitioner has filed this petition under Section 482 Cr.P.C challenging the complaint filed by the first respondent in S.T.C.No. 500 of 2011, pending on the file of the learned Judicial Magistrate, Thiruchendur.

2. Here the question involved in this case is whether the facts disclosed in the complaint or the final report constitute the offence with which accused have been charged.

3.The brief facts of the petitioner's case that leading to file this Criminal Original Petition is as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

3(1). The petitioner is a member of All Merchants Association, Thiruchendur. Initially, the first respondent Law



Enforcing Agency, based on the complaint given by the second respondent, registered FIR against 16 named accused along with 150 unnamed members for unlawfully assembling before the Thiruchendur Bus Stand and made demonstration to remove the unlawful erection of digital banner lift up by a political party in front of the shops owned by the Members of the All Merchants Association, on the ground that the digital banners erected by a political party, caused hindrance to public, traffic and their business, for that purpose, the petitioner and the members of the petitioner's Association assembled in front of the Thiruchendur bus stand and made demonstration.

3(2).Aggrieved by the demonstration, the Law Enforcing Agency registered the First Information Report. After completing the investigation, final report has been filed before the Judicial Magistrate, Thiruchendur. Thereafter, the said Court take the final report on file in S.T.C.No.500 of 2011, implicating 75 persons as accused. The petitioner is arrayed as Accused No.39, in the said S.T.C.

4. The learned counsel appearing for the petitioner would submit that on the day, when the demonstration was made by the petitioner, there was no ban as referred under Section 144 Cr.PC and there is no promulgation by the first respondent police. However, after informing to the first respondent, the petitioner and other members assembled before the Thiruchendur Bus Stand and made demonstration against the political party, who erected flex banners illegally.

5. The learned counsel for the petitioner would further submit that the banners erected by the concerned political party is an unauthorized one. As per this Court vigilance, the aggrieved party is entitled to remove the same, if the same cause hindrance to the general public. The petitioner and other members are aggrieved parties as against the illegal erection of banners in front of the shops, that also give hindrance to the general public, for their ingress and egress. Accordingly, the petitioner's association genuinely decided to make out demonstration against the illegal erection of digital banners and request the Law Enforcing Agency to remove the unauthorized banners which were erected by the concerned political parties.

6. The learned counsel appearing for the petitioner further submitted that the First Information Report registered by the first respondent does not contain any definite acquisition which amounts to abuse of process of law. When there is no offence said to have been committed by the petitioner and other persons implicating them within the penal provision of Sections 147, 143, 341 and 188 IPC does not arise. In the absence of any evidence or document for implicating the petitioner and other persons in the criminal case, it is an abuse of process of law.



7. The learned counsel appearing for the petitioner drew the attention of this Court to the similarly placed persons who have also not committed any offence under Sections 147, 143, 341 and 188 IPC and prayed that the benefit given to the petitioner may also be extended to the other persons also. In support of his contention, he relied upon the decision of the Honourable Supreme Court reported in **(1999) 7 SCC 69 in Dandu Lakshmi Reddy v. State of A.P.**

8. The learned Government Advocate (Criminal Side) appearing for the State would submit that the petitioner and the members of the petitioner's Association without any prior permission, assembled in front of the Tiruchendur bus stand and made a demonstration against the illegal erection of banners, which is against law. Accordingly, the Law Enforcing Agency registered a case under Sections 147, 143, 341 and 188 IPC in Crime No.26 of 2011 and the challenge made against the complaint at the initial stage, is not maintainable. The inherent jurisdiction of this Court can be invoked, only if any manifest error or error apparent on the face of record. Accordingly, he prayed for dismissal of the Criminal Original Petition.

9. I have considered the rival submissions made by the learned counsel for the petitioner as well as the learned Government Advocate (Criminal Side) appearing for the first respondent.

10. The admitted fact in dispute is that the political party erected digital banners in front of the shops of the petitioner and the members of the petitioner's Association and the first respondent did not show any material that the flex banners were erected with the permission of the concerned authority and further, the first respondent did not show any material to show that on the particular day, promulgation was made to prevent the citizens to assemble in the city of Thiruchendur. In the absence of material, assembling of the persons in one place, cannot be said to be illegal. Hence, implicating the petitioner for offences under Sections 143, 147, 341 and 188 IPC does not arise, unless the Law Enforcing Agency establishes an order of promulgation was made.

11. The learned counsel appearing for the petitioner relied upon the following judgments:-

1) **Dandu Lakshmi Reddy v. State of A.P.** reported in **(1999) 7 SCC 69** wherein at para 25 has been held as follows:

"25. The mother of the appellant Narayanamma is languishing in jail at present pursuant to the conviction and sentence awarded to her in this case. Of course her conviction is not before us as she did not file any special leave petition. But this Court has set up a judicious precedent for the purpose of averting miscarriage of justice in similar situations. On the evaluation of a case, if this Court reaches the conclusion that no conviction of any accused is possible the benefit of that decision must



be extended to his co-accused also though he has not challenged the order by means of an appeal petition to this Court (vide *raja Ram v. State of M.P.*)."

2) **Murugesan and others v. State of Tamil Nadu** reported in **1989 Cr1.L.J.1833**, wherein at para 4 has been held as follows:

"4. Further, the materials on record also do not point out any violence or criminal force used by the petitioners on the relevant date and time. Therefore, mere presence of the petitioners in front of the Sri Mushnam Police Station without resorting to any violence or criminal force, would not constitute an offence under S.147 I.P.C."

12. On perusal of the above judgments, it is clear that when this Court comes to a conclusion that no case is made out against the accused/petitioner, the said benefit can also be extended to other persons, who were similarly placed like that of the petitioner herein. Accordingly, since no offence is made out as against the petitioner, the said benefit is also extended to all the accused in this case.

13. For quashing the Criminal complaint, a celebrated judgment of the Honourable Supreme Court reported in **R.P.Kapur Vs. State of Punjab [AIR 1960 SC 866]**, wherein the Hon'ble Apex Court had summarised some of the categories of cases, where the inherent power under Section 482 of the Code could be exercised by the High Court to quash criminal proceedings against the accused. These are: [AIR P.869, Para 6]

(i) where it manifestly appears that there is a legal bar against the institution or continuance of the proceedings e.g. want of sanction;

(ii) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety do not constitute the offence alleged;

(iii) where the allegations constitute an offence, but there is no legal evidence adduced or the evidence adduced clearly or manifestly fails to prove the charge.

14. Applying the principles laid down by the Hon'ble Apex Court in the abovesaid decision cited supra, more particularly, Clauses (ii) and (iii) of **R.P. Kapur v. State of Punjab** (cited supra), which are squarely applicable to the case on hand, I have no hesitation to quash the Criminal complaint.



15. Accordingly, the Criminal Original Petition is allowed and S.T.C.No.500 of 2011 on the file of the Judicial Magistrate, Thiruchendur, is quashed. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate, Thiruchendur
2. The Inspector of Police,
Thiruchendur Police Station,
Thiruchendur.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.C.ARUL VADIVEL @ SEKAR, ADVOCATE IN SR No. 86192

KMI/IS

TE/SKN-RSK/SAR-1 : 30/11/2017 : 5P/5C

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M.P.(MD)No.1 of 2011
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