

IN THE HIGH COURT OF JUDICATURE AT MADRAS

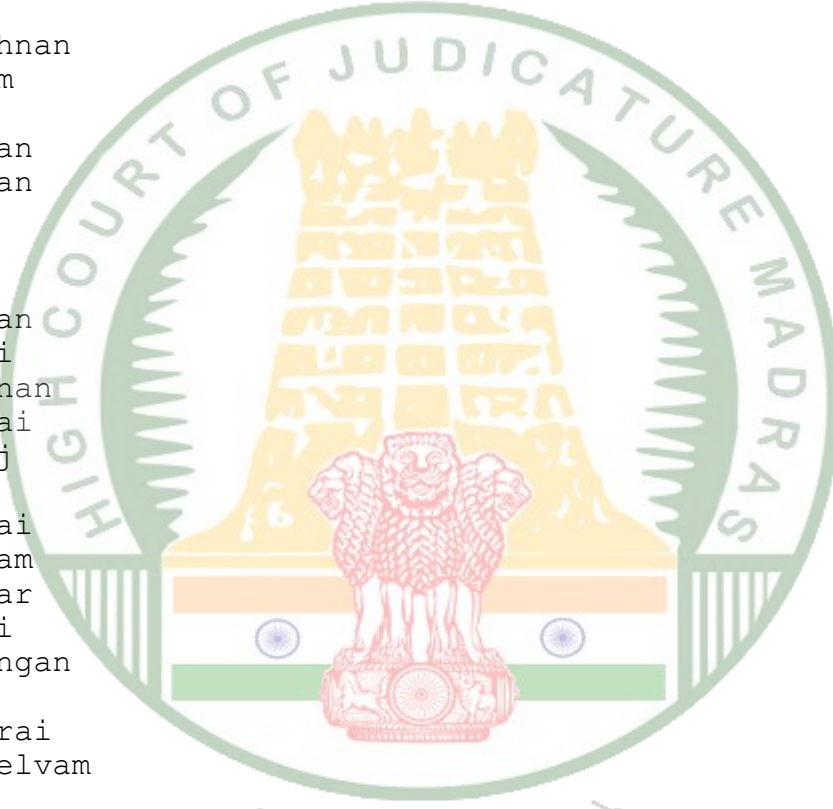
DATED :28.03.2018

CORAM:

THE HONOURABLE MR. JUSTICE M.S.RAMESH

CrI.O.P.No. 6397 of 2018 &
CrI.M.P.No.3262 & 3263 of 2018

1.Soundarajan
2.Rathi
3.Mayakrishnan
4.Shanmugam
5.Mohanraj
6.Kannapiran
7.Mahendiran
8.Ramdev
9.Boopathi
10.Shankar
11.Jayaraman
12.Rajamani
13.Loganathan
14.Elumazhai
15.Durairaj
16.Palani
17.Annamalai
18.Vinayagam
19.Jayakumar
20.Boopathi
21.Pandurangan
22.Nethaji
23.Ponnudurai
24.Paneerselvam
25.Ravi
26.Ramachandiran
27.Dhandabani
28.Baktavachalam
29.Gokul
30.Kadirvel
to 30



सत्यमेव जयते

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Vs.

.. Petitioners/Accused 1

State represented by
The Inspector of Police,
D2, Chengalpet Police Station
Kanchipuram District
(Crime No.675 of 2016)

.. Respondent

PRAYERS: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to C.C.No.117 of 2017 on the file of the learned Judicial Magistrate-II, Chengalpet and quash the same.

For Petitioners : Mr.B.Rabu Manohar
for Mr.A.Kumaraguru

For Respondent : Mrs.P.Kritika kamal,
Government Advocate (Crl. side)

O R D E R

This petition has been filed seeking to quash the proceedings in C.C.No.117 of 2017 on the file of the learned Judicial Magistrate-II, Chengalpet.

2. Heard Mr.B.Rabu Manohar, learned counsel for the petitioners as well as Mrs.P.Kritika kamal, learned Government Advocate (Crl. side) appearing for the respondent.

3. The petitioners have been charged for offences under Sections 143, 341 & 186 of IPC. The case of the prosecution is that on 28.12.2016 at about 2.30 p.m., about 100 persons belonging to Hindu Munnani Party had unlawfully assembled and indulged in obstructing traffic in the roads by demanding removal of the statue and crosses in S.No.184/2 situated at No.11, Azhagu Samudhram Village, thereby committed the offence of unlawful assembly and wrongful restraint.

4. The learned counsel for the petitioners submits that there was no criminal force and no promulgations on that date. The complainant himself admitted that there was no unlawful activities during the party and no promulgation on that date. Hence, the offence under section 143 has not been made out.

5. The learned Government Advocate (Crl. Side) on the other hand, submitted that there are previous cases in connection with this agenda and that, the petitioners had unlawfully indulge in blocking traffic by unlawfully assembling in the road and therefore, offences are made out.

6. I have given careful consideration to the submissions of both the counsels.

7. On a perusal of the statement given by the complainant, there was a categorical statement that the petitioners herein along with others had not indulge in any acts of causing of law and order situation. In otherwords, the assembly as such was peaceful. The issue as to whether such an assembly could be

termed as "unlawful assembly" came up for consideration before this Court and by an order dated 25.10.2017 made in Crl.O.P.No.4479 of 2017, this Court had observed as follows-

" 4. It is no body's case that all the persons including the petitioner had assembled there for the purpose of show of a criminal force or a trespass or committing mischief etc. In otherwords, the petitioner and others seem to have assembled there peacefully without committing or attempting to commit any mischief, trespass or any other offence. In this regard, I am unable to comprehend as to how this could be termed as unlawful assembly under Section 141 of IPC.

5. Now that I have found that the petitioner and other had assembled in the place of occurrence peacefully which does not constitute the offence of unlawful assembly, the offence under Section 188 of IPC also will not be made out. One of the ingredients of Section 188 IPC is that the disobedience of an order promulgated by a public servant is to cause or tend to cause obstruction, annoyance or injury to any person. Since the assembly of the petitioner and the others are peaceful and that there was no offence of unlawful assembly made out, the offence under Section 188 IPC is also not made out. In view of the same, the Criminal Original Petition deserves to be allowed."

8. In order to constitute an offence under Section 141, it is necessary that the assemble of persons should be with a common object to overawe by criminal force, or show of criminal force, the Central or any 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 to resist the execution of any law, or of any legal process or to commit any mischief or criminal trespass, or other offence or 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 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.

9. In the present complaint given to the respondent, the

categorical statement of the VAO/complainant is that owing to the assembly, there was no possibility of law and order situation. As such, this assembly would not be termed to an offence under Section 141 of IPC. Admittedly, there was no promulgate on the date when the occurrence took place. As such, the offence under Section 341 and 186 of IPC also may not be made out.

10. This Court in the Order dated 23.02.2018 passed in Cr1.O.P.(MD)No.13044 of 2013 had observed as follows:

" 4. The learned counsel appearing for the petitioners submitted that on the day, when the demonstration was made by the petitioners, there was no ban as referred to Section 144 Cr.P.C and there is no promulgation by the respondent police. The learned counsel appearing for the petitioners further submitted that condemning the road between Peikulam and Pannamparai Vilakku did not lay properly, the petitioners genuinely decided to make out demonstration in front of the Kamarajar Statue without any disturbance to the general public.

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6. The learned Government Advocate (Criminal side) appearing for the State submitted that the petitioners without any prior permission, unlawfully assembled in front of the Kamarajar Statue and made a demonstration, demanding to lay a road, between Peikulam and Pannamparai Vilakku properly, preventing the buses and thereby, caused disturbance to the general public. Accordingly, the Law Enforcing Agency registered a case against them for the offences punishable under Sections 143, 341 and 188 IPC in Crime No.186 of 2012 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 fact of record. Accordingly, he prayed for dismissal of the Criminal Original Petition.

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8. The admitted fact in dispute is that without any prior permission, the petitioners unlawfully assembled in front of the Kamarajar Statue situated at Peikulam to Pannamparai Main Road and made a demonstration, demanding to lay a road between Peikulam and Pannamparai Vilakku properly, preventing the buses and thereby, caused disturbance to the

general public, but the respondent did not produce any material to show that on the particular day, promulgation was made to prevent the citizens to assemble in the city of Tuticorin. In the absence of material, assembling of the persons in one place, cannot be said to be illegal. Hence, implicating the petitioners for offences under Sections 143, 341 and 188 IPC does not arise, unless the Law Enforcing Agency establishes an order of promulgation was made."

11. The above order is self-explanatory. On the comprehensive reading of the order extracted above, I am of the view that the offences under Section 143, 341 & 186 of IPC have not been made out and as such, it would not be appropriate to make the petitioners to undergo ordeal of a criminal trial.

12. In the result, the Criminal Original Petition stands allowed and the Criminal Miscellaneous Petitions stands closed. Consequently, the proceedings in C.C.No.117 of 2017 on the file of the learned Judicial Magistrate-II, Chengalpet stands quashed

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate-II, Chengalpet.

2. The Chief Judicial Magistrate, Kanchipuram.

3. The Inspector of Police,
D2, Chengalpet Police Station
Kanchipuram District

4. The Public Prosecutor, High Court, Madras.

+1cc to Mr.R.Rabu Manohar, Advocate, S.R.No.24015

Crl.O.P.No. 6397 of 2018 &
Crl.M.P.Nos.3262 & 3263 of 2018

MP (CO)
RRK(25/04/2018)