



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.09.2018

CORAM

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THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.(MD)No.10139 of 2014
and
M.P.(MD)No.1 of 2014

Tamilselvan ... Petitioner / Accused No.16

Vs.

1.The Sub Inspector of Police,
Mudukulathur Police Station
Ramanathapuram District ...1st Respondent/Complainant

2.K.Kannan ... 2nd Respondent /Defacto
Complainant

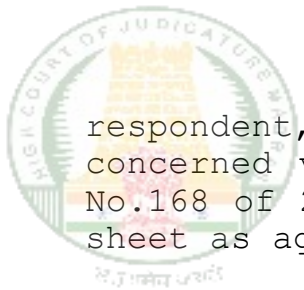
PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to C.C.No.136 of 2011 on the file of the Judicial Magistrate Court, Mudukulathur, Ramanathapuram District and quash the proceedings in so far as the petitioner alone.

For Petitioner:Mr.R.Murugappan
For R1 :Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Crl.Side)

O R D E R

This quash petition has been filed under Section 482 Cr.P.C to quash the Proceedings in C.C.No.136 of 2011 on the file of the Judicial Magistrate Court, Mudukulathur, Ramanathapuram District and have taken cognizance for the offences punishable under Sections 147, 353, 188 and 506(i) I.P.C as against the 22 accused persons, in which, the petitioner is arraigned as 16th accused.

2.The case of the prosecution is that on 11.09.2008 at about 11.00 a.m, the petitioner and 21 others have assembled unlawfully and went to procession through Maravar Street at Mudukulathur violating the promulgation order promulgated by the Deputy Superintendent of Police, Paramakudi under Section 30(2) of Police Act, which was enforced in that area from 20.08.2008 to 18.09.2008. Further alleged that the petitioner and others obstructed the Government Servants from doing their works and also threatened with dire consequences. On the basis of the complaint given by the second



respondent, who is the Village Administrative Officer of the concerned village, the first respondent registered a case in Crime No.168 of 2008 and after completing investigation, filed the charge sheet as against the petitioner and others.

3.The learned counsel appearing for the petitioner would submit that the registration of the case itself is against law, because the respondent police had clubbed Section 188 I.P.C with other I.P.C offences. It is a clear violation of Section 195 Cr.P.C., In fact, the petitioner and others were never informed any promulgation order passed under Section 30(2) of Police Act by the concerned police officer at the place of occurrence. Further, he would submit that the petitioner has no knowledge about any promulgation order promulgated under Section 30(2) of Police Act on 11.09.2008 by the concerned authority, at the place of occurrence. Further, he contended that the second respondent have no locus standi to lodge a complaint. According to Section 195 Cr.P.C., who promulgated the above said order, the said officer has only locus to lodge a complaint. Therefore, the complaint itself is not maintainable. Hence, he prays for quashing the entire proceedings in C.C.No.136 of 2011 on the file of the learned Judicial Magistrate, Mudukulathur.

4.Further, the learned counsel appearing for the petitioner has relied upon the unreported Judgment passed by this Court in CrI.O.P(MD).No.16689 of 2011, dated 14.11.2017 which reads as follows:

"8.The admitted fact in dispute is that the petitioners unlawfully assembled before the Thiruchendur Main Arch and made a demonstration to arrest the members who had caused damages to Dr.Ambedkar digital board in Thiruchendur but the first respondent did not produced 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.

9.The learned counsel appearing for the petitioner relied upon the judgment of this Court in Murugesan and others v. State of Tamil Nadu reported in 1989 CrI.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."



10. On perusal of the above judgment, 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.

11. For quashing the Criminal complaint, I may usefully refer to a celebrated judgment of the Honourable Supreme Court in R.P.Kapur Vs. State of Punjab reported in 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.

12. 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".

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl.Side) appearing for the first respondent and perused the materials available on record.

6. The above Judgment is squarely applicable to the case on hand. Admittedly, the petitioner and others had assembled and took procession through Maravar Street at Mudukulathur. But, it is seen from the records that the first respondent has not produced any material to show that on the particular day, promulgation was made to prevent the citizens to assemble in the occurrence place. In the absence of material, assembling of the persons in one place, cannot be said to be illegal. Therefore, implicating the petitioner for the offences under Sections 147, 353, 188 and 506(i) I.P.C does not arise, unless the Law Enforcing Agency establishes that an order of promulgation was made. Further, as indicated by this Court in the above Judgment, the Principles laid down by the Hon'ble Supreme



Court was squarely applicable to the case on hand. Therefore, this Court is inclined to quash the criminal proceedings.

7. Accordingly, the criminal original petition is allowed and the case in C.C.No.136 of 2011 on the file of the Judicial Magistrate, Mudukulathur, Ramanathapuram District is quashed as against the petitioner alone. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(co)

/True Copy/

Sub Assistant Registrar(cs-II)

To

1. The Judicial Magistrate,
Mudukulathur,
Ramanathapuram District.

2. The Sub Inspector of Police,
Mudukulathur Police Station,
Ramanathapuram District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.R.Murugappan Advocate in SR.No.88022

Cr1.O.P. (MD) No.10139 of 2014
and
M.P. (MD) No.1 of 2014

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