



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.02.2018

CORAM:

THE HONOURABLE MR.JUSTICE **R. PONGIAPPAN**

CRL.O.P (MD) No.13044 of 2013

and

M.P. (MD) Nos.1 and 2 of 2013

1.Arulraj
2.Ponipass
3.Thomas
4.Arulraj
5.Francis
6.Sahayaraj
7.Kannan
8.Selvaraj
9.Antonyrajasingh
10.Sridhar
11.Yesuraj

... Petitioners/Accused

Vs.

State represented by
The Inspector of Police,
Sathankulam Police Station,
Thoothukudi District.
(In Crime No.186 of 2012)

... Respondent/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, Sathankulam, Thoothukudi District in S.T.C.No.35 of 2013 and quash the same.

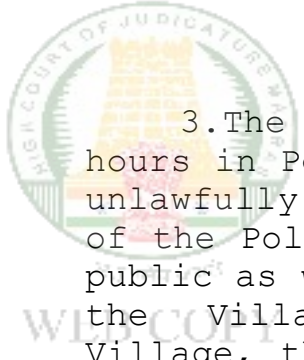
For Petitioners : Mr.C.Arul Vadivel @ Sekar

For Respondent : Mr.A.Robinson
Government Advocate
(Criminal Side)

O R D E R

The petitioners herein are the accused in S.T.C.No.35 of 2013 on the file of the Judicial Magistrate Court, Sathankulam, Thoothukudi District.

2.In the final report filed by the respondent police, they made an allegation against the petitioners as they committed the offences punishable under Sections 143, 341 and 188 IPC. Now, the petitioners filed this petition under Section 482 Cr.P.C., in which, they are seeking the relief to quash the entire charge sheet laid by the respondent police.



3.The case of the prosecution is that on 06.07.2012, at 21.30 hours in Peikulam to Pannamparai Main Road, the petitioners herein unlawfully without any prior intimation, contrary to Section 32(2) of the Police Act, made a road roko and caused disturbance to the public as well as to the traffic. Based on the complaint given by the Village Administrative Officer, Sri Venkateshwarapuram Village, the case has been registered by the respondent police in Crime No.186 of 2012 for the abovesaid provisions of law. As of now, the trial is yet to be commenced in the Trial Court.

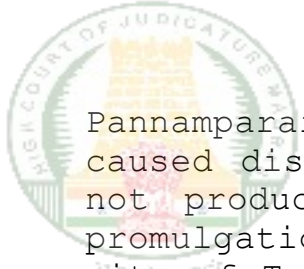
4.The learned counsel appearing for the petitioners submitted that on the day, when the demonstration was made by the petitioners, there was no ban as referred to Section 144 Cr.P.C. and there is no promulgation by the respondent police. The learned counsel appearing for the petitioners further submitted 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.

5.The learned counsel appearing for the petitioners further submitted that the First Information Report registered by the 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 petitioners, implicating them within the penal provision of Sections 143, 341 and 188 IPC does not arise. In the absence of any evidence or document for implicating the petitioners in the criminal case, it is an abuse of process of law.

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 face of record. Accordingly, he prayed for dismissal of the Criminal Original Petition.

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

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.

9.The learned counsel appearing for the petitioners relied upon the judgment of this Court in **Murugesan and others v. State of Tamil Nadu** reported in **1989 Cr1.L.J. 1833**, wherein at Paragraph No.4, it 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/petitioners, the said benefit can also be extended to other persons, who were similarly placed like that of the petitioners herein. Accordingly, since no offence is made out as against the petitioners, the said benefit is also extended to all the accused in this case.

11.For quashing the Criminal compliant, I may usefully refer to a celebrated judgment of the Honourable Supreme Court in **R.P.Kapur v. 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



(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.

13. Accordingly, this Criminal Original Petition is allowed and the case in S.T.C.No.35 of 2013, on the file of the Judicial Magistrate Court, Sathankulam, Thoothukudi District, is quashed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To

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

+1cc to Mr.C.Arul Vadivel @ Sekar, Advocate Sr.No.51091

LS/SMN2

VB/SV/MMS/SAR4/12/03/2018/4P/5C

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