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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 30.01.2018

Delivered on : 06.02.2018

CORAM

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

CrI.O.P. (MD) No.1996 of 2013 &  
M.P. (MD) Nos.2 and 3 of 2013

and

CrI.O.P. (MD) No.19068 of 2012 &  
M.P. (MD) No.1 of 2012

Irudayaraj

... Petitioner  
in CrI.O.P. (MD) No.1996/2013

- 1.Gopal
- 2.Papanasam
- 3.Paulraj
- 4.Chellathurai
- 5.Mahan
- 6.Mohammedkhan
- 7.Sivasakthi
- 8.Soosai Manickam
- 9.Millar
- 10.Mariapanitharai
- 11.Loorthusamy
- 12.Vadivelan
- 13.Narayanan
- 14.Thangavel
- 15.Arumugam
- 16.Vijaya Sankar
- 17.Mariyappan
- 18.Jeyapaul
- 19.Beemaraj
- 20.Ramasamy
- 21.Muthaiah
- 22.Ramesh Kumar
- 23.Sankara Nainar
- 24.Arunachalam
- 25.Kumar
- 26.Anthony Selvam
- 27.Muthaiah
- 28.Loorthusamy
- 29.Paulmariyappan
- 30.Sundar
- 31.Peter
- 32.Kutty



33.Jothimani  
34.Murugesan  
35.Murugesan  
36.Arumugam  
37.Serma Ganesh  
38.Anthonysamy  
39.Thangapandi  
40.Meenakshi Sundaram  
41.Balasubramanian  
42.John  
43.Perumal  
44.Thomaiya  
45.Lakshmanan  
46.Vijayaragavan  
47.Savari Raj  
48.Aathimulam  
49.Victoria  
50.Gomathiyammal  
51.Santhanam  
52.Kalyani  
53.Muthulakshmi  
54.Rani  
55.Vasanthi  
56.Kannammal  
57.Ulagammal  
58.Parvathi  
59.Poovammal  
60.Seetha  
61.Shanmuga Vadivoo  
62.Swarnam

... Petitioners  
in Crl.O.P.(MD)No.19068/2012

Vs.

1.State Rep. by  
The Inspector of Police,  
V.K.Puram Police Station,  
Tirunelveli District.  
(Crime No.243/2012)

2.Thanappan

... Respondents  
in both the Crl.O.Ps.

PRAYER in both the Crl.O.Ps.: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the Charge Sheet in C.C.No.262 of 2012 on the file of the Judicial Magistrate Court, Ambasamudram, Tirunelveli District and quash the same as illegal insofar as the petitioners alone are concerned.



For R1 : Mr.A.Robinson  
(in both the CrI.O.Ps.) Government Advocate  
(Criminal side)

For R2 : No Appearance  
(in both the CrI.O.Ps.)

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COMMON ORDER

These petitions have been filed by the petitioners under Section 482 Cr.P.C., to quash the proceedings relating to C.C.No.262 of 2012 on the file of the Judicial Magistrate Court, Ambasamudram, Tirunelveli District.

2.Here the question involved in this case is whether the facts disclosed in the complaint or the final report will constitute the offences under Sections 143, 341,188 and 291 IPC, in the absence of a promulgation.

3.The facts in brief leading to the filing of these Criminal Original Petitions, are as follows:

On 15.07.2012, at 11.00 a.m., near Ambalavanapuram Amali Higher Secondary School Bus Stop, Accused Nos.1 to 64 unlawfully assembled and restrained the vehicles passing through the Main Road and thereby, they made public nuisance. Initially, this case was registered in Crime No.243 of 2012, in which, it is alleged that even after made announcement as the order passed under Section 30(2) of the Police Act is in force, the petitioners assembled unlawfully and committed this offence. After completing investigation, the respondent police laid a final report before the learned Judicial Magistrate, Ambasamudram, Tirunelveli District, for the offences stated above. Thereafter, the same was taken on file in C.C.No.262 of 2012 implicating 63 persons as accused.

4.The learned counsel appearing for the petitioners submitted that the during day on which, the alleged demonstration was made by the petitioners, there was no ban as referred in Section 144 Cr.P.C. and there is no proclamation by the first respondent police. He further submitted that the demonstration is made by the petitioners only for removing the encroachments made by the encroachers in the area. He further added that the First Information Report does not contain any definite accusation, 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 provisions of Section 143, 341, 188 and 291 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.

<https://hcservices.50.0.gov.in/hcservices/>  
5. On the other hand, the learned Government Advocate (Criminal side) appearing for the State submitted that the petitioners are without any prior permission, unlawfully assembled in the Main Road



and made a protest for removal of encroachments. Accordingly, the Law Enforcing Agency registered a case as above. Hence, the challenge made against the charge sheet is not maintainable.

6. This Court heard the submissions of the learned counsel appearing for the parties and perused the materials available on record.

7. Now, considering the submissions of either side, it is an admitted fact that on the date of alleged occurrence, the petitioners were unlawfully assembled in the Main Road and made a protest. But, the first respondent herein did not produce any material along with the charge sheet to show that on the particular day, proclamation was made to prevent the citizens to assemble in the City of Ambasamudram. In the absence of such material, assembling of the persons in one place cannot be said to be illegal, unless the Law Enforcing Authority establishes that an order of proclamation is in force.

8. In the Judgment of this Court in Murugesan and others Vs. State of Tamil Nadu reported in 1989 Cri.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 Shri Mushnam Police Station without resorting to any violence or criminal force, would not constitute an offence under Section 147 IPC.'

9. On perusal of the above Judgment, it is clear that when this Court comes to the conclusion that no case is made out against the petitioners with regard to the offence under Section 143 IPC, the said benefit can also be extended to other persons, who were similarly placed like that of the petitioners herein. Further, the offence under Section 188 IPC must be based on the complaint to be given under Section 195(1)(a) Cr.P.C. The decision reported in 2008 Cri.L.J. 3576 [Jiwan Kumar vs. State of Punjab and others] is relied upon in respect of the said proposition.

10. Furthermore, it is useful to refer the judgment of the Delhi High Court reported in 2002 Cri.L.J. 2872 [Bhoop Singh Tyagi Vs. State], wherein it has been held as follows:

'A person booked under Section 188 IPC must have actual knowledge of public servant's order requiring him to do or abstain from doing some act. Acquiring or gaining of such knowledge is a prerequisite. Any proof of general notification promulgated by a public servant would not satisfy the requirement.'



11. So, applying the above said principle in these cases also, the Law Enforcing Authority did not show any reliable material that the petitioners herein knows that the order passed under Section 30 (2) of the Police Act, is in force. The only evidence with regard to the said aspect is the Deputy Superintendent of Police, Tenkasi. In a statement recorded by the Investigation Officer, he has specifically mentioned the order passed by the Sub-Collector which was sent to the Police Station on 14.07.2012. On the other hand, on going through the charge sheet, the offence was committed only on 15.07.2012, which shows that the order passed under Section 30(2) of the Police Act is not published through the Media or by any other mode. So, in order to decide these petitions that aspect is also to be taken into account for consideration. Except the offence under Section 188 IPC, other offences mentioned in the charge sheet are all consequential in nature.

12. So, for the reasons stated above, the proceedings relating to C.C.No.262 of 2012 pending on the file of the Judicial Magistrate Court, Ambasamudram, Tirunelveli District, are liable to be quashed insofar as the petitioners are concerned. Accordingly, these Criminal Original Petitions are allowed and the proceedings relating to C.C.No.262 of 2012 pending on the file of the Judicial Magistrate Court, Ambasamudram, Tirunelveli District, stands quashed in respect of the petitioners alone. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AS)

/True Copy/

Sub-Assistant Registrar

To

1. The Judicial Magistrate,  
Ambasamudram, Tirunelveli District.
  2. The Inspector of Police,  
V.K.Puram Police Station,  
Tirunelveli District.
  3. The Additional Public Prosecutor,  
Madurai Bench of Madras of High Court, Madurai.
- +One c to Mr.R.Murugappan, Advocate, SR.No.46440  
smn2

RL/5C/5P/KK/SAR1/14/2/2018

Common order made in  
Crl.O.P. (MD) Nos.1996 of 2013 and 19068 of 2012

06.02.2018