

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.10.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Crl.O.P.No.20439 of 2019
and
Crl.M.P.No.10515 of 2019

C.VetrivelChezhiyan ..Petitioner/Accused Rank No.1

/Vs./

1.State represented by
The Sub Inspector of Police,
F1, Chintadaripet Police Station,
Chennai - 600002. ...Respondent / Complainant
(Crime No.380 of 2018)

2.Mr.Krishnamoorthy,
The Sub Inspector of Police,
F1 Chintadaripet Police Station,
Chennai - 600002. ...Respondent/ De facto Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the charge sheet in C.C.No.475 of 2019 on the file of the Metropolitan Magistrate - XIV, Egmore, Chennai in Crime No.380 of 2018 on the file of the 1st respondent and quash the same.

For Petitioner :Mr.R.Sankarasubbu
for Mr.A.Suresh Sakthi Murugan

For R-1 :Mr.C.Iyyapparaj
Additional Public Prosecutor

ORDER

The petitioner herein has been arrayed as first accused among 43 accused and charged for the offences under Sections 143, 353 and 149 IPC r/w Section 41 of the 'Tamil Nadu City Police Act' [hereinafter referred to as 'the said Act' for the sake of brevity, clarity and convenience].

2. The case of the prosecution is that on 17.12.2018, the petitioner herein along with 42 persons had protested against the orders of the National Green Tribunal directing to re-open the Sterlite Industries, by shouting slogans, inspite of promulgation order issued by the Commissioner of Police under Section 41 (2) of the said Act.

Section 161 (3) Cr.P.C., reveals that the petitioner along with others had not assembled with a common object to overawe by criminal force, or show of criminal force, the Government or any public servant, to resist the execution of any law, or any legal process, or to commit any mischief or criminal trespass, or other offence or by means of criminal force, or to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, etc., or by means of criminal force, to compel any person to do what he is not legally bound to do. To constitute an unlawful assembly, the common object of the assembly must be an immediate one to be carried on to effect forthwith. Therefore, to determine the commission of offence of an unlawful assembly would be as to whether the object of the accused persons was unlawful.

4. In the instant case, the statements of the witnesses reveal that the petitioner, along with others, had assembled protesting against re-opening of Sterlite Industries. None of the witnesses speak about criminal force or trespass or had committed mischief. As such, the assembly could be determined as a peaceful assembly in the absence of any crime or attempt to commit the ingredients necessary for an unlawful assembly. When this group of persons cannot be termed as people of unlawful assembly, the offence under Sections 143 and 149 IPC will not be made out.

5. Insofar as the offence under Section 353 IPC is concerned, none of the statements recorded under Section 161 (3) Cr.P.C., indicates that the members of the group had used criminal force to deter a public servant from discharging his duties. When the assembly itself was not unlawful and in the absence of any overt acts attributed to the petitioner to implicate him of having deterred the public servant from discharging his duties, the offence under Section 353 IPC would also not be made out. When all these major offences have not been substantiated through the statements of the witnesses or other evidences, the offence under Section 41 of the Tamil Nadu City Police Act alone cannot be sustained and hence, it would not be appropriate to submit the petitioner herein to the ordeal of a criminal trial.

6. For all the foregoing reasons, records pertaining to the charge sheet in C.C.No.475 of 2019 on the file of the Learned Metropolitan Magistrate - XIV, Egmore, Chennai in Crime No.380 of 2018 on the file of the 1st respondent is quashed. This Criminal Original Petition stands allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VI)

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To

1.The XIV Metropolitan Magistrate,
Egmore, Chennai.

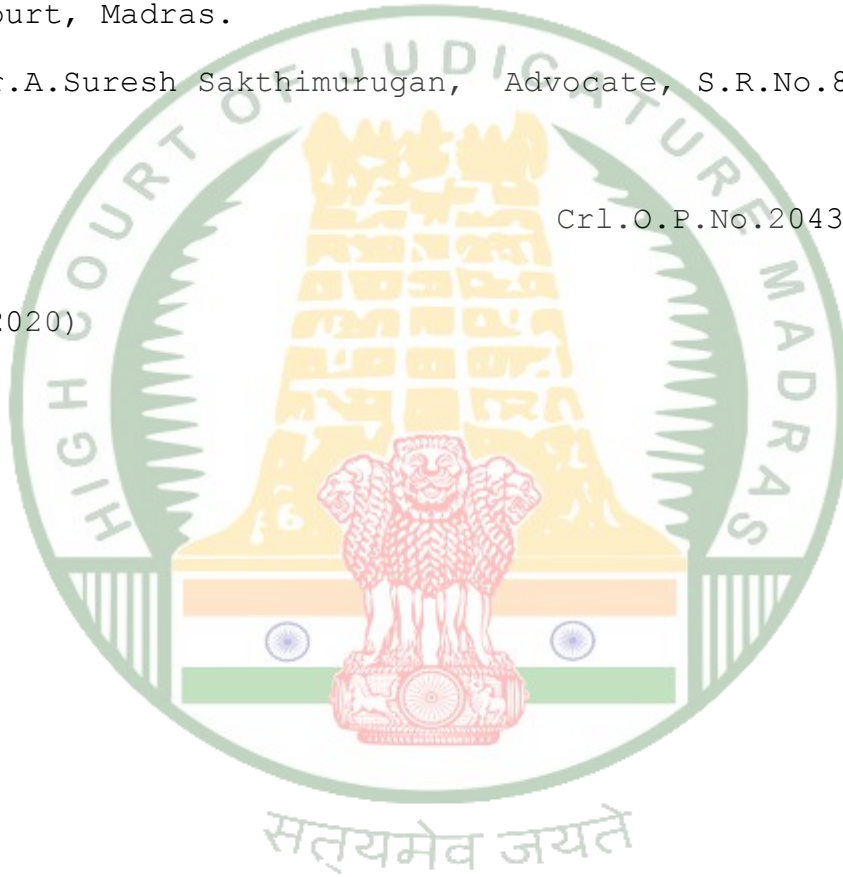
2.The Sub Inspector of Police,
F1, Chintadaripet Police Station,
Chennai - 600002.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.A.Suresh Sakthimurugan, Advocate, S.R.No.87859

CrI.O.P.No.20439 of 2019

RSV(CO)
GN(14/02/2020)



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