



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2019

CORAM:

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THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P(MD) No.17453 of 2019
and CRL.M.P (MD)10300 of 2019

1. Thangapandiyan
 2. Muthumanickam
 3. Ramakannan
 4. Balamurugan
- ... Petitioners/Accused Rank 1 to 4

Vs.

1. The State Rep. by
The Inspector of Police
A.Mukkulam Police Station
Virudhunagar District
 2. K.M.Thiruppathi
Village Administrative Officer,
A.Mukkulam Group,
Thiruchuli Taluk
Virudhunagar District
- ... Respondent/Complainant
- ... Respondent/Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to quash the FIR in Crime No. 78 of 2017 for the offences under Sections 143 and 341 of IPC, which is pending before the first respondent police.

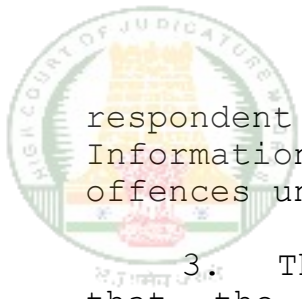
For Petitioners : Mr.S.Vanchinathan

For Respondents : Mr.K.Suyambulinga Bharathi
Government Advocate(Crl.Side)

O R D E R

This Criminal Original Petition has been filed to quash the Crime No. 78 of 2017 on the file of the respondent

2. The case of the prosecution is that on 19.07.2017 at about 08.30 a.m the petitioner and other Anti Ramki (Bio Medical Waste company) gathered along with school students who are studying at Government Higher Secondary School and Hindu Primary School at A. Mukkulam Village and some women involved in the protest without any permission. On the basis of the above said allegation, the



respondent police registered the complaint and filed a First Information Report against the petitioners and others for the offences under Sections 341 and 143 of IPC in Crime No.78 of 2017.

3. The learned counsel appearing for the petitioners submitted that the alleged First Information Report was registered on 25.07.2017 in crime No. 78 of 2017 for the offence under Sections 143 and 341 of IPC. It is admittedly hit by Section 468 of Cr.P.C. Since the first respondent did not complete investigation and filed final report for more than two years. To attract the offence under Sections 143 and 341 of IPC there is no prima facie case made out as against the petitioner. The first respondent mechanically registered the case without even single piece of iota of evidence to attract the offence as against the petitioners. He also relied upon the order passed by this Court in Crl.O.P(MD) No.s 1356,14873,14785 and 15866 of 2018. The relevant portion reads as follows:

"In all these cases, it is seen that a Final Report has been filed for an Offence under Section 188 and 143 of IPC and cognizance has also been taken by the concerned Judicial Magistrates. In view of the above discussion, the cognizance of the Final Report under Section 188 of IPC is liable to be quashed. Insofar as the offence under Section 143 of IPC is concerned, in all the cases, the concerned Police Officer has quoted Section 30(2) of the Police Act, and therefore, has straight away proceeded to register an FIR under Section 143 of IPC. As stated above, a mere violation of the so called promulgation under Section 30(2) of the Police Act will not make out an offence under Section 143 of IPC by straight away declaring an assembly of persons to be an unlawful assembly. The power under Section 30(2) of the Police Act is merely regulatory in nature. In fact, Section 32 of the Police Act itself provides for a penalty for disobeying an order issued under Section 30(2) of the Police Act with a punishment of a fine not exceeding 200 rupees. Where as an offence under Section 143 of IPC is punishable with imprisonment for a term which may extend to 6 months. Therefore, a violation of the so called promulgation under Section 30(2) of the Police Act will not by itself constitute an offence under Section 143 of IPC. In all the cases, the assembly of persons were made to express dissatisfaction of the governance and claiming for minimum rights that are guaranteed to a ordinary citizen. If such an assembly of persons are to be trifled by registering an FIR under Section 143 of IPC and filing a Final Report for the very same offence,



citizens and such prohibition will amount to violation of fundamental rights guaranteed under the Constitution.

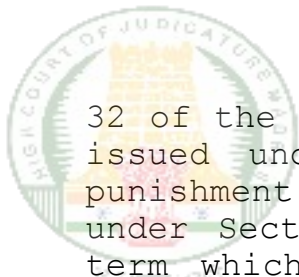
2. In these cases, the informant and the investigator are one and the same person. Therefore, there was no fair investigation in these cases. This issue is covered by the judgment of the Hon'ble Supreme Court in **Mohanlal .Vs. The State of Punjab** in **Crl.A.No.1880 of 2011** referred supra. Therefore, the Final Report for an offence under Section 143 of IPC is hereby quashed".

4. Per contra, the learned Government Advocate(Crl.Side) submitted that on 19.07.2017 at about 08.30 a.m the petitioner and other Anti Ramki (Bio Medical Waste company) gathered along with school students who are studying at Government Higher Secondary School and Hindu Primary School at A. Mukkulam Village and some women involved in the protest without any permission and there are specific allegations as against the petitioners to proceed with the trial. Further, he would submit that Section 188 of IPC is a cognizable offence and therefore it is the duty of the police to register a case. Though there is a bar under Section 195(a)(i) of Cr.P.C. to take cognizance for the offence under Section 188 of IPC, it does not mean that the police cannot register FIR and investigate the case. Therefore, he vehemently opposed the quash petition and prayed for dismissal of the same.

5. Heard Mr.S.Vanchinathan, learned counsel for the petitioners and Mr.K.Suyambulinga Bharathi, learned Government Advocate(Crl.Side) appearing for the respondents.

6. On perusal of the charge, it is seen that on 19.07.2017 at about 08.30 a.m the petitioner and other Anti Ramki (Bio Medical Waste company) gathered along with school students who are studying at Government Higher Secondary School and Hindu Primary School at A. Mukkulam Village and some women involved in the protest without any permission. Therefore the respondent police levelled the charges under Sections 341, 143 of I.P.C. as against the petitioners and others. Except the official witnesses, no one has spoken about the occurrence and no one was examined to substantiate the charges against the petitioner.

7. In the case of hand, the petitioners gathered along with 250 students involved in protection without obtaining any permission. Infact all the police officers has quoted section 30(2) of the Police Act and as such registered the First Information Report under Section 143 of IPC. Mere violation of the so called promulgation under Section 30(2) of the Police Act will not make out the offence under Section 143 of IPC, since it cannot be stated that assembly of persons to be unlawful assembly. Further Section



32 of the Police Act provides for a penalty of disobeying an order issued under Section 30(2) of the Police Act itself with a punishment of a fine not exceeding 200 rupees, where as the offence under Section 143 of IPC is punishable with imprisonment for a term which may extend to six months. Therefore the violation so called promulgation will not constitute the offence under Section 143 of IPC. That apart the first respondent did not even complete the investigation and no final report was filed today. Therefore it also hit by the provision under Section 468 of Cr.P.C. As such, the First Information Report or final report is liable to be quashed for the offences under Sections 143 and 341 of IPC. Further, the complaint does not even state as to how the protest formed by the petitioners and others is an unlawful protest and does not satisfy the requirements of Section 143 and 341 of IPC. Therefore, the final report cannot be sustained and it is liable to be quashed.

8. Accordingly, the proceedings in Crime No. 78 of 2017 is quashed insofar as the petitioners concerned and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.Side)

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Sub Assistant Registrar(CS)

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To:

1. The Inspector of Police
A.Mukkulam Police Station
Virudhunagar District
2. The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.S. VANCHINATHAN, Advocate (SR-101747[F] dated 27/11/2019)

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JMN(19.12.2019) 4P : 4C