

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.PONGIAPPAN

Cr1.O.P.No.32108 of 2019

Basheer,
S/o.Syed Abdul Mouli

...Petitioner/Accused 2

versus

1. State by:
The Inspector of Police,
M-3 Puzhal Police Station,
Puzhal, Chennai - 600 066.1st Respondent/Complainant
2. Thiru.Ganasambandam,
Sub-Inspector of Police,
M-3 Puzhal Police Station,
Puzhal, Chennai - 600 066.2nd Respondent/De-facto
Complainant

Prayer: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, seeking to call for the records relating to the F.I.R. in Crime No.1933 of 2017 dated 09.10.2017 on the file of the first respondent police and quash the same.

For Petitioner : Mr.P.Pugalenth
For Respondent No.1 : Mr.S.Karthikeyan
Additional Public Prosecutor
For Respondent No.2 : Not ready in notice

O R D E R

This Criminal Original Petition has been filed praying to quash the F.I.R. registered in Crime No.1933 of 2017 dated 09.10.2017 on the file of the first respondent police, as illegal.

2. The case of the prosecution is that on 05.10.2017, at 08.45 p.m., the petitioner/A-2 along with other accused were protested outside the Puzhal Jail, by demanding the arrest of the State Secretary of the Tamilnadu Muslim Munnetra Kazhagam, without any prior permission from the concerned authority.

Therefore, a case has been registered against this petitioner in Crime No.1933 of 2017 for the offences under Sections 143 and 188 of IPC.

3. Heard Mr.P.Pugalthi, learned counsel appearing for the petitioner and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the first respondent police.

4. This Court is of the view that Section 188 of IPC can be invoked only if there has been a disobedience of a duly promulgated order by a public servant. The said provision reads as under:

"188. Disobedience to order duly promulgated by public servant -Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

5. It is not in dispute that during the relevant time, no prohibitory order was in force. To make out an offence under Section 143 of IPC, it must be shown that the petitioner was the member of an unlawful assembly. What is unlawful assembly is defined in Section 141 of IPC. The said provision reads as under:

"141. Unlawful assembly -An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is-

First - To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

Second - To resist the execution of any law, or of any legal process; or

Third - To commit any mischief or criminal trespass, or other offence; or

Fourth – By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth – By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.”

6. It is not the case of the prosecution that the petitioner exhibited criminal force or his object was to overawe by criminal force the Government Officials. He did not resist the execution of any law or any legal process. He did not commit any criminal mischief or any criminal trespass or any other offence. No where it is shown in the FIR that the object to the assembly of which the petitioner constituted a part would fall under Section 141 of IPC.

7. In this case, a whole reading of the F.I.R. will disclose the fact that the petitioner herein has not obstructed or prevented the wronged person from proceeding on a particular way. Therefore, this Court is of the view that the offences under Sections 143 and 188 of IPC are not made out. That apart, as rightly contended by the learned counsel appearing for the petitioner disobedience per se will not attract Section 188 of IPC. It must be shown that on account of such disobedience on the part of the petitioner of a duly promulgated order by a public servant, something adverse happened. In this case, no such event is alleged to have happened. Therefore, this Court is of the view that Section 188 of IPC is also not made out.

8. This Court is clearly of the view that even if all the averments set out in the F.I.R. are taken as true, no case is made out against the petitioner. Therefore, the proceedings in Crime No.1933 of 2017 on the file of the first respondent police are quashed insofar as the petitioner herein is concerned.

9. Accordingly, this Criminal Original Petition is allowed.

Sd/-
Assistant Registrar(L.A)

//True Copy//

Sub Assistant Registrar

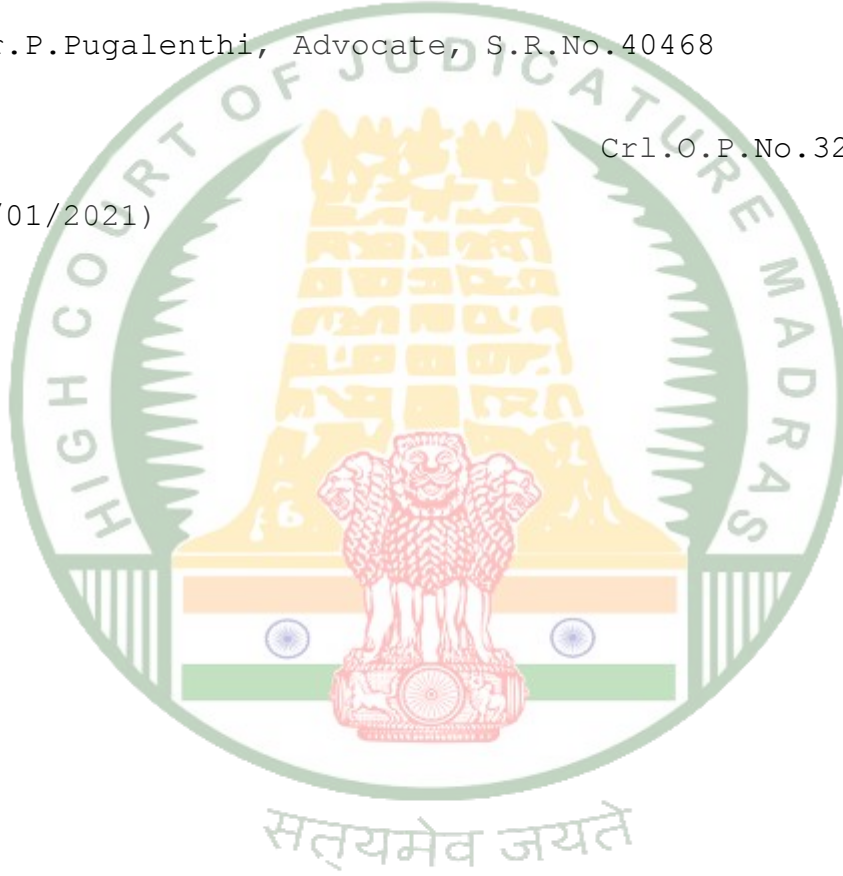
To

1. The Inspector of Police,
M-3 Puzhal Police Station,
Puzhal, Chennai - 600 066.
2. The Sub-Inspector of Police,
M-3, Puzhal Police Station,
Puzhal, Chennai-600066
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Pugalenthir, Advocate, S.R.No.40468

Crl.O.P.No.32108 of 2019

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