



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2020

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

Crl.OP.(MD)No.4532 of 2020

and

Crl.MP.(MD)Nos.2564 & 2565 of 2020

WEB COPY

Mr.X : Petitioner / Accused No.7
Vs.

1.State Rep by
The Inspector of Police,
Thilagar Thidal Police Station,
Madurai City.
Cr.No.407 of 2018 :1st Respondent/Complainant

2.Jeyapandian :2nd Respondent/De-facto Complainant
[Identity of the petitioner suppressed, as per the order of this
Court dated 16.03.2020]

PRAYER: Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the impugned charge sheet in S.T.C.No.8162 of 2019, on the file of the learned Judicial Magistrate No.II, Madurai and quash the same as illegal insofar as the petitioner / 7th accused is concerned.

For Petitioner : Mr.K.Pandiarajan

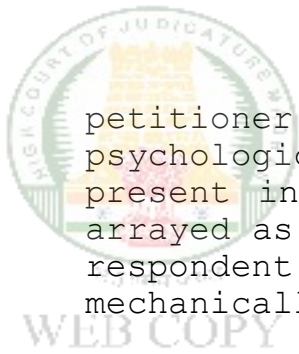
For R.1 : Mr.K.K.Ramakrishnan,
Additional Public Prosecutor

ORDER

The seventh accused in S.T.C.No.8162 of 2019 filed this petition to quash the proceedings pending against him on the file of the learned Judicial Magistrate No.II, Madurai.

2. The first respondent Police registered a case against the petitioner and 27 others based on the complaint of the second respondent / Sub-Inspector of Police, Thilagar Thidal Police Station, Madurai, for the offence under Sections 143, 188 and 341 IPC. The first respondent, after completing the investigation, filed the final report as against this petitioner and others that on 22.05.2018, at about 06.25 pm, the petitioner and other accused unlawfully assembled at the Junction Point on Melaveliveethi and RMS Road, committed the crime by blocking the public road in order to protest against the shooting incident at Thoothukudi on the closure of M/s.Sterlite Industries located therein and also condemning and raising slogans against the Government of Tamil Nadu and caused hindrance to the traffic and public.

3. According to the learned Counsel for the petitioner, the
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petitioner is a mentally ill person, undergoing treatment for psychological disorder and without knowing the consequences, he was present in the occurrence place. But he was also arrested and was arrayed as an accused in this case. He would further submit that the respondent Police, without conducting a proper investigation, has mechanically filed the final report as against this petitioner also.

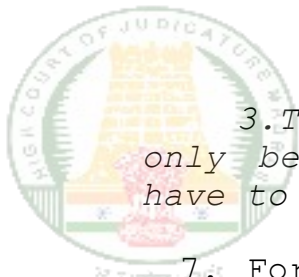
4. In support of his contention, the learned Counsel has relied upon the Certificate issued by N.Suresh Kumar, M.A., M.Phil., (Cln.Psy), Consultant Clinical Psychologist. The said Clinical Psychologist in his report dated 07.10.2010 & 08.10.2010, has observed that "Mr.S, aged about 20 years 10 months has mental age of 11 years 2 months, he has a verbal I.Q of 72 and Performance I.Q of 85. His overall I.Q was found to be 79, which indicates he has **Borderline intellectual capacity**. He also has features of **Behavior problems**."

5. Apart from this ground, the learned Counsel for the petitioner has also raised very many other grounds in support of this petition.

6. This Court, satisfied with the primordial ground raised by the petitioner on his mental illness, directed the presence of the petitioner as well as the defacto complainant / second respondent, before this Court on 16.03.2020 at 05.30 pm. Accordingly, the petitioner as well as the defacto complainant were present before the Court and My Predecessor - Hon'ble Mr.JUSTICE G.R.SWAMINATHAN, who has held the portfolio then, examined the petitioner in the Chamber, had a conversation with the petitioner and concluded that the petitioner is a person with very low IQ. The proceedings dated 16.03.2020 is extracted as under:

"The learned counsel for the petitioner submitted before me that the petitioner had been falsely implicated in this case and that he was merely watching the picketing that was going on. The petitioner was said to be having psychiatric issues. In order to satisfy myself, I directed the petitioner to appear before me. Accordingly, the petitioner appeared before me in my chamber and I had a conversation with him. I definitely conclude that the petitioner is a person with very low IQ.

2.The case of the prosecution is that an organization known as Dravida Viduthalai Kazhagam had conducted a demonstration on 22.05.2018 in a busy area. The petitioner's mental condition is such that he cannot be a member of any organization. The petitioner is not a mentally retarded person. He can converse. But, that does not mean that he is a normal individual. His understanding capacity is rather low. There is so much of innocence in him that I find it strange that the respondent police did not even notice it.



3. The implication of the petitioner in a criminal case can only be characterized as most unfortunate. The police will have to be duly sensitized. Call this case next week."

7. For want of time, the petition could not be disposed of on 16.03.2020 itself and in view of the present COVID-19 Pandemic and change of roaster, the petition was listed before this Court.

8. Heard the learned Counsel for the petitioner and the learned Additional Public Prosecutor and also perused the materials placed on record.

9. The allegation as against this petitioner is that he is a member of an organization and participated in a condemnation along with the other accused and raised slogans against the Government. The occurrence had taken place on 22.05.2018, wherein a protest was made by several people against the police firing, on the agitation made against M/s.Sterlite Industries. To attract an offence under Section 143 IPC, the person must have participated in an unlawful assembly with certain ill motives when the prohibitory orders are in existence.

10. As per the certificate of the Clinical Psychologist, the petitioner, though aged about 20 years and 10 months, is mentally aged about 11 years and 2 months. He is having a Verbal I.Q of 72 and Performance I.Q of 85 and his overall I.Q was only 79. He has Borderline intellectual capacity and Behavior problems. This certificate was issued on 07.10.2010 & 08.10.2010 and since then, he was in a continuous treatment for his ailment.

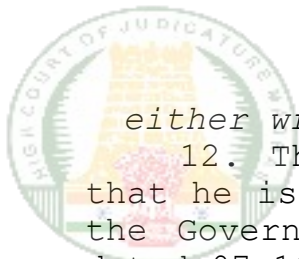
11. As per Section 83 of the Indian Penal Code, an act of a child above seven years and under twelve years, who has not attained sufficient maturity of understanding to judge the nature and consequences of his conduct on that occasion, cannot be considered as an offence. As per Section 84 of the Indian Penal Code, nothing is an offence, which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of act, or that he is doing what is either wrong or contrary to law. For better understanding, Sections 83 & 84 of the Indian Penal Code are extracted as under:

"83.Act of a child above seven and under twelve of immature understanding -

Nothing is an offence which is done by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion.

84.Act of a person of unsound mind -

Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is



either wrong or contrary to law.”

12. The allegation as against the petitioner in this case is that he is a member of unlawful assembly and raised slogans against the Government. But the Certificate of the Clinical Psychologist, dated 07.10.2010 & 08.10.2010, would disclose that his mental age is of 11 years and 2 months and this fact has also been verified by this Court, in person, in the presence of the defacto complainant, on 16.03.2020. The petitioner is, therefore, entitled for the relief under Section 84 of the Indian Penal Code. In fact, this Court, on 16.03.2020, has also observed that the implication of the petitioner in a criminal case can only be characterized as most unfortunate and that the police will have to be duly sensitized.

13. Under such circumstances, this Court is inclined to set aside the charge sheet pending against the petitioner / seventh accused and accordingly, the charge sheet in S.T.C.No.8162 of 2019, on the file of the learned Judicial Magistrate No.II, Madurai, is set aside, insofar as the petitioner / seventh accused is concerned.

14. In fine, this criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

gk

NOTE:

In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Judicial Magistrate No.II,
Madurai.

2.The Inspector of Police,
Thilagar Thidal Police Station,
Madurai City.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

Cr1.OP.(MD)No.4532 of 2020
16.06.2020

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