



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 07.09.2020

CORAM:

THE HONOURABLE Mr.JUSTICE R.PONGIAPPAN

CRL OP(MD)No.9383 of 2020

and

CrI.M.P. (MD)No.4403 of 2020

1.Seeni Kadhar, S/o.Maideen Pitchai
2.Yunesh @ Yunis Khan, S/o. Nalla Mohamed
3.Habifulla, S/o.Mohammed Ali
4.Sameer @ Mohammed Shameer, S/o.Thasin ... Petitioners

Vs.

1.State Rep. by
The Inspector of Police,
Vilakkuthoon Police Station,
Madurai City.
(Crime No.593 of 2018)

2.Sakkubai,
Sub-Inspector of Police,
Vilakkuthoon Police Station,
Madurai City.

... Respondents

PRAYER: Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records pertaining to the First Information Report in Crime No.593 of 2018, on the file of the first respondent Police and quash the same as illegal.

For Petitioners : Mr.S.M.A.Jinnah

For R1 : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (CrI. Side)

O R D E R

This Criminal Original Petition has been filed to call for the records relating to the F.I.R. in Crime No.593 of 2018, on the file of the first respondent Police and quash the same as illegal.

2.The case of the prosecution is that on 22.08.2018, at 06.30 a.m., the petitioners, who are the Members of the Tamil Nadu Thowheed Jamaath [TNTJ] and 470 others assembled at Thenkarai Road, near Noor Pallivasal, Madurai, conducted prayer by blocking the road and caused disturbance to the Public. Therefore, a case has been registered against the petitioners and others under Sections 188, 143 and 341, I.P.C.



3. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl. side) appearing for the first respondent.

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 petitioners were members 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-

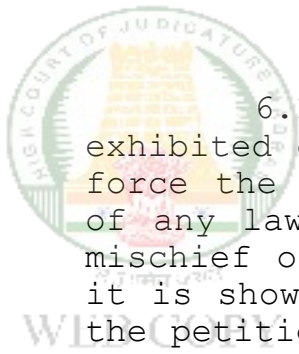
First.-To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

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



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

7.Insofar as the offence under Section 341 I.P.C., which prescribes punishment for wrongful restraint, is concerned, wrongful restraint has been defined in Section 339 I.P.C. To bring home an offence under Section 341 I.P.C., the prosecution must prove,

- (a) that the wronged person had a right to proceed on a particular way over land or water;
- (b) that the accused obstructed or prevented the wronged person from proceeding along the particular way;
- (c) that the accused caused such obstruction voluntarily; and
- (d) lastly, the obstructor must not have reason to believe in good faith that he had a lawful right to obstruct.

8.In this case, a whole reading of the F.I.R. will disclose the fact that the petitioners herein had not obstructed or prevented the wronged person from proceeding on a particular way. Therefore, this Court is of the view that the offence under Sections 143, 341 and 188 I.P.C. is not made out. That apart, as rightly contended by the learned counsel appearing for the petitioners disobedience *per se* will not attract Section 188 of I.P.C. It must be shown that on account of such disobedience on the part of the petitioners 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.

9.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 petitioners. Therefore, the proceedings in Crime No.593 of 2018, on the file of the first respondent Police, are quashed insofar as the petitioners are concerned.

10.Accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

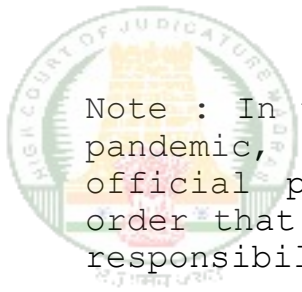
Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



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.

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- 1.The Inspector of Police,
Vilakkuthoon Police Station,
Madurai City.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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VB (14.09.2020) 4P 3C