



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.11.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CrI.O.P (MD)No.12443 of 2020

and

CrI.M.P (MD)No.5642 of 2020

WEB COPY

Kanagaraj

... Petitioner/ Accused No.1

Vs

1. The State rep., by
The Inspector of Police,
Virudhunagar East Police Station,
Virudhunagar,
Virudhunagar District
(In Crime No.41 of 2018)

... 1st respondent/complainant

2. Sivarajapandian,
Sub Inspector of Police,
East Police Station,
Virudhunagar,
Virudhunagar District.

... 2nd Respondent/ Defacto
Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for records of FIR in Crime No.41 of 2018 pending on the file of the 1st respondent and quash the same as illegal as against the petitioner.

For Petitioner : Mr.A.Balaji
For Respondent : Ms.S.E.Vevonica Vincent
Government Advocate

ORDER

This Criminal Original Petition has been filed to call for records relating to the FIR in Crime No.41 of 2018 on the file of the Inspector of Police, Virudhunagar East Police Station, Virudhunagar, and quash the same as against the petitioner.

2.The impugned F.I.R. was registered on the suo-motu complaint of the Sub Inspector of Police attached to the respondent police, alleging that on 24.01.2018, the petitioner along with 50 others, who are the students of V.H.N.S.N College, Virudhunagar gathered together in Virudhunagar Aruppukottai Road, and staged demonstration against the college authorities, for the hike of college fee. The second respondent rushed to the spot and instructed the protestors to disperse from the spot. Except 12 students rest of the students were dispersed from the spot and others were continued their protest



and the same leads to the lodgment of complaint, resulting in registration of FIR in Crime No.41 of 2018 for the alleged offence punishable under Sections 143 & 188 of I.P.C.

3.The learned Government Advocate (Crl.Side) appearing for the respondent would submit that even after direction was issued to the protestors to disperse from the spot, the petitioner along with some other students continued their protest, which leads to public nuisance and distrupction to traffic. Hence, the learned Government Advocate strongly opposed to quash the First Information Report.

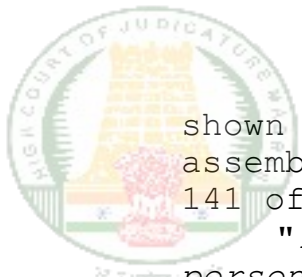
4.The learned counsel for the petitioner would submit that the role of police officer is confined only to take preventive action as stipulated under Section 41 of Cr.P.C and he has to inform the same to the concerned authorities. He would further state that the above issue in hand is covered by the order passed by this Court in CRL.OP (MD)No.3770 of 2012, dated 06.06.2018. Moreover, the petitioner is the first graduate and his father is a coolie. That apart, the petitioner was selected for CRPF. Hence, the learned counsel would pray to quash the said First Information Report.

5.In the decision relied on by the petitioner in CRL.OP(MD) No.3770 of 2012, dated 06.06.2018, this Court in similar circumstances, has held as follows:-

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 trends 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. The petitioner had obtained permission to conduct the demonstration. Again, to make out an offence under Section 143 of IPC, it must be



shown that the petitioner was a 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 final report that the object to the assembly of which the petitioner constituted a part would fall under Section 141 of IPC.

7.Therefore, this Court is of the view that the offences under Section 143 is clearly not made out. That apart, as rightly contended by the learned counsel 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 final report are taken as true, no case is made out against the petitioner. Therefore, the impugned proceedings in C.C.No.146 of 2011 on the file of the learned District Munsif cum Judicial Magistrate, Andipatti are quashed.



6. In my considered opinion, the above decision is squarely applicable to the facts and circumstances of the present case. The submission made by the learned counsel for the petitioner also taken into consideration. Therefore, the impugned proceedings in Crime No.41 of 2018 on the file of the Inspector of Police, Virudhunagar East Police Station, Virudhunagar, is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-II)

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/ /2020

Sub Assistant Registrar(CS)

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

ORDER MADE IN
CrI.O.P(MD)No.12443 of 2020
and
CrI.M.P(MD)No.5642 of 2020
05.11.2020

MA (CO)
CS (04.12.2020) 4P 3C