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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.11.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Crl.O.P(MD)No.13050 of 2020

and

Crl.M.P(MD)No.5952 of 2020

T.Ulagaraj

... Petitioner/ Accused No.1

vs.

1.The State represented by
The Inspector of Police
Thirupalaikudi Police Station
Ramanathapuram District
(Crime No.73 of 2020)

...Respondent/complainant

2.Mr.Jothimurugan
Sub Inspector of Police
Thirupalaikudi Police Station
Ramanathapuram District

...Respondent/Defacto Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for records pertaining to Crime No.73 of 2020 on the file of the first respondent and quash the same as against this petitioner is concerned.

For Petitioner	: Mr.P.Manikandan
For R1	: Ms.S.E.Vevonica Vincent Government Advocate

ORDER

This Criminal Original Petition has been filed to call for records pertaining to Crime No.73 of 2020 on the file of the first respondent and quash the same as against the petitioner.

2.The case of the prosecution is that the petitioner along with four others have illegally gathered thereby violating 144 Cr.P.C proclamation and without following the social distance in Covid-19 Pandemic. Therefore, based on the complaint given by the second respondent, a case in Crime No.73 of 2020 came to be registered against them for the alleged offence punishable under Sections 269, 188 I.P.C and Section 51(b) Disaster Management Act 2005.

3.The learned Government Advocate (Crl.Side) appearing for the first respondent would submit that the petitioner without wearing mask during the Covid-19 Pandemic and without following



the social distance norms, had illegally gathered thereby violating 144 Cr.P.C proclamation.

4.The learned counsel for the petitioner would submit that the Government gave liberty to purchase the urgent things for medical purposes but the respondent without consider the same, filed the F.I.R. 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.

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



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.

5.In my considered opinion, the above decision is squarely applicable to the facts and circumstances of the present case. Therefore, the impugned proceedings in Crime No.73 of 2020 on the



file of the Inspector of Police, Thirupalaikudi Police Station, Ramanathapuram District, is quashed in respect of this petitioner alone and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2021

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
Thirupalaikudi Police Station
Ramanathapuram District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P(MD)No.13050 of 2020

and

Crl.M.P(MD)No.5952 of 2020

19.11.2020

KM (04.01.2021) 4P 3C