



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.12.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Crl.O.P(MD)No.14338 of 2020

and

Crl.M.P(MD)No.6703 of 2020

- 1.R.Selvam
- 2.M.Karthick
- 3.P.Aadhavan
- 4.M.Manivel
- 5.C.Chandran
- 6.Raja
- 7.Samykannu
- 8.A.Kannan
- 9.R.Tamizhan
- 10.V.Poopandi
- 11.C.Packiyaraj
- 12.P.Saravanakumar
- 13.M.Gunasekaran
- 14.P.Muruganantham
- 15.K.Mahalilingam
- 16.L.Ramesh
- 17.R.Alagarsamy
- 18.M.Mariyappan
- 19.V.Sundharam
- 20.M.Neethimaan
- 21.M.Marimuthu
- 22.R.Gnanaprakasam
- 23.P.Thavasiiyappan
- 24.M.Veeralakshmi
- 25.M.Veerammal
- 26.M.Thavasilakshmi
- 27.S.Vijaya
- 28.K.Palaniyammal
- 29.M.Rani
- 30.T.Aswin
- 31.K.Jothi
- 32.K.Muthumari
- 33.R.Gowri
- 34.S.Selvi
- 35.M.Karthiga
- 36.N.Ramuthai
- 37.M.Kavitha



38.M.Muthumari
39.S.Sundharamoorthy

... Petitioners/Accused Nos.
1 to 39

Vs.

1.State represented by
The Inspector of Police,
D1-Tallakulam Police Station (L&O),
Madurai City,
(Crime No.1419 of 2015)

...1st Respondent/Complainant

2.V.Chandrasekaran
Inspector of Police,
D1-Tallakulam Police Station (L&O),
Madurai City.

...2nd Respondent/Defacto
Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records pertaining to the impugned charge sheet in S.T.C.No.147 of 2016, on the file of the Judicial Magistrate No.II, Madurai in Crime No.1419 of 2015 dated 14.12.2015, on the file of the Respondent No.1 police for alleged offences under sections 143,188 nad 341 of IPC and quash the same as illgal.

For Petitioner : Mr.T.Thirumurugan

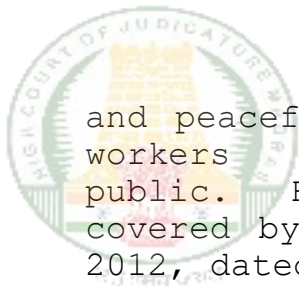
For R1 : Ms.S.E.Veronica Vincent
Government Advocate(Crl.Side)

ORDER

This Criminal Original Petition has been filed to quash the case in S.T.C.No.147 of 2016, on the file of the learned Judicial Magistrate No.II, Madurai in Crime No.1419 of 2015 dated 14.12.2015, on the file of the Respondent No.1 police for the alleged offences under sections 143,188 and 341 of IPC.

2.The impugned F.I.R. was registered on the complaint of the 2nd respondent/Inspector of Police, D1-Tallakulam Police Station (L&O), Madurai alleging that on 14.12.2015, the petitioners were gathered and conducted demonstration near Thiruvalluvar Statue, Panagal Road demanding to provide food and gloves to the sanitary workers. Therefore, a case was registered in Crime No.1419 of 2015 by the respondent police for the alleged offence punishable under Sections 143, 188 and 341 I.P.C and after the filing of the charge sheet, the case was also taken on file in S.T.C.No.147 of 2016, on the file of the learned Judicial Magistrate No.II, Madurai.

3.The learned counsel for the petitioners would state that the demonstration was conducted by the petitioners in a democratic



and peaceful manner for providing food and gloves to the sanitary workers without causing any violence or inconvenience to the public. 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.

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4.The learned Government Advocate (Crl.Side) appearing for the respondent/police would state that the petitioners joined together and conducted demonstration causing inconvenience to the public and therefore, the FIR has been registered. After investigation, the Police have also filed the charge sheet and the same has been taken on file in S.T.C.No.147 of 2016.

5.Replying to the above submissions, the learned counsel for the petitioners would state that even if the charge sheet is filed, this Court exercising its inherent powers under Section 482 Cr.P.C., can quash the FIR and to the said proposition, he would rely on the judgment of the Hon'ble Supreme Court in Anand Kumar Mohatta and another vs. State (Govt of NCT of Delhi) Department of Home and another, reported in (2019) AIR (SC) 210.

6.Heard the learned counsel for the petitioner as well as the learned Government Advocate (Crl.Side). Since no adverse order is going to be passed against the 2nd respondent, notice to him is not necessary.

7.In the decision relied on by the petitioners 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 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. 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

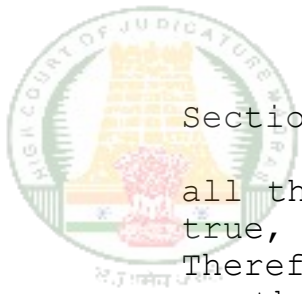
Third – To commit any mischief or criminal trespass, or other offence; or

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 made out. That apart, as rightly contended by the learned counsel for the petitioner disobedience per se will not attracted 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.

8.Here in the present case, the petitioners have gathered and conducted demonstration demanding to provide food and gloves to sanitary workers. The allegation is very trivial and simple in nature. Stating that the petitioners' demonstration to provide food and gloves to sanitary workers curtailed the free flow of traffic, the respondent/police has registered the above case. Though the learned Government Advocate(Crl.Side) would state that the charge sheet has been filed, the entire reading of the FIR shows that no cognizable offence is made out and the petitioners have made demonstration only in the democratic manner to provide food and gloves to sanitary workers and it is also stated that there was no violence during such demonstration. Even if the above case is directed to be proceeded with, no fruitful purpose would be achieved.

9.As rightly contended by the learned counsel for the petitioners, though the learned Government Advocate (Crl.Side) would state that the charge sheet has been filed and the same has been taken on file in S.T.C.No.147 of 2016, I am inclined to quash the impugned proceedings in the interest of justice in view of the following judgment in Anand Kumar Mohatta and another vs. State (Govt of NCT of Delhi) Department of Home and another, reported in (2019) AIR (SC) 210, which reads as follows:-

"28. It is necessary here to remember the words of this Court in State of Karnataka v. L. Muniswamy and others which read as follows: -

7. ..In the exercise of this wholesome power, the High Court is entitled to quash a proceeding if it comes to the conclusion that allowing the proceeding to continue would be an abuse of the process of the Court or that the ends of justice require that the proceeding ought to be quashed. The saving of the High Court's inherent powers, both in civil and criminal matters, is designed to achieve a salutary public purpose which is that a court proceeding ought not to be permitted to degenerate into a weapon of harassment or persecution. In a criminal case, the veiled object behind a lame prosecution, the very nature of the material on which the structure of the prosecution rests and the like would justify the High Court in quashing the proceeding in the interest of justice."

10.Accordingly, the impugned proceedings in S.T.C.No.147 of 2016, on the file of the learned Judicial Magistrate No.II, Madurai



in Crime No.1419 of 2015 dated 14.12.2015, on the file of the Respondent No.1 police are quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

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/ /2020

Sub Assistant Registrar(CS)

bala/vrn

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 Chief Judicial Magistrate,
Madurai.
- 3.The Inspector of Police,
D1-Tallakulam Police Station (L&O),
Madurai City.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.THIRUMURUGAN, Advocate (SR-24995[F] dated 10/12/2020

ORDER MADE IN
Crl.O.P(MD)No.14338 of 2020
and
Crl.M.P(MD)No.6703 of 2020

ARK(CO)
NR (18/12/2020) 6P : 6C