



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

Crl.O.P(MD)No.13255 of 2020
and
Crl.M.P(MD)No.6095 of 2020

Periyasamy

... Petitioner

vs.

1)The Inspector of Police,
Paramakudi Taluk Police Station,
Ramanathapura District.
(Crime No.332 of 2020)

2)Ramaiah,
Special Sub Inspector of Police,
Paramakudi Taluk Police Station,
Ramanathapuram District.

... Respondents

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the records pertaining to the impugned FIR in Crime No.332 of 2020 under Sections 188, 269 of IPC r/w 3 of Epidemic Disease Act 1897, 51(b) of Disaster Management Act, 2005 on the file of the 1st respondent police and quash the same as illegal.

For Petitioner : Mr.D.Balamurugapandi

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

ORDER

This petition has been filed to call for the records pertaining to the impugned FIR in Crime No.332 of 2020 under Sections 188 and 269 of IPC on the file of the 1st respondent police and quash the same as illegal.

2.The allegation in the FIR is that on 17.09.2017, the petitioner along with others without wearing mask and without following social distance, went on the public road as rally for participating in the memorial day function of Immanuel Sekaran and raised slogans in violation of the prohibition order passed under Section 144 Cr.P.C and refused to obey the police instructions. Based on the complaint of the 2nd respondent/Sub Inspector of Police,



a case in Crime No.332/2020 under Sections 188 and 269 IPC was registered against the petitioner.

3.The learned counsel for the petitioner would state that on the face of FIR, it does not make out any offence and that the issue in the present case is covered by the decisions of this Court in CRL.OP(MD)No.3770 of 2012, dated 06.06.2018. Thus, he would pray to quash the FIR.

4.The learned Government Advocate (Crl.Side) would state that in breach of prohibitory order issued under Section 144 Cr.P.C. during covid-19 lockdown period, the petitioner conducted rally without wearing mask and without following the social distance for participating in the memorial day function of Immanuel Sekaran and disobeyed the instructions of the police and therefore, FIR has been registered. She would also state that after investigation, now the charge sheet has been filed on 23.11.2020 and the same has been taken on file in C.C.No.1728 of 2020 on the file of the learned Judicial Magistrate, Paramakudi. She would fairly state that no violence or untoward incident had taken place.

5.Replying to the above submissions, the learned counsel for the petitioner 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) for the respondents.

7.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 made out. That apart, as rightly contended by the learned counsel for the petitioner disobedience per se will not attract Section 143 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 petitioner and others went on the public road as rally for participating in the memorial day function of Immanuvel Sekaran and disobeyed the instructions of the police. The allegation is very trivial and simple in nature. 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 learned Government Advocate(Crl.Side) has also fairly stated that there was no violence or untoward incident. 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 petitioner, 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 C.C.No.1728 of 2020, 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 charge sheet filed in C.C.No.1728 of 2020 on the file of the learned Judicial Magistrate, Paramakudi in Crime No.332/2020 on the file of the 1st respondent/police is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (RTI)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

bala/vsd

To

1)The Judicial Magistrate,
Paramakudi.

2)The Inspector of Police,
Paramakudi Taluk Police Station,
Ramanathapura District.

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

+1 CC to M/s.D. BALAMURUGA PANDI, Advocate (SR-22560[F] dated
24/11/2020)

ORDER MADE IN
Crl.O.P(MD)No.13255 of 2020
DATED : 08.12.2020

(ARK) CO

AP(30/12/2020) 5P 5C