



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.12.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CrI.O.P (MD)No.13664 of 2020

and

CrI.M.P (MD)No.6301 of 2020

WEB COPY

Marimuthu

... Petitioner/Accused No.25

vs.

1)The State through
The Inspector of Police,
Alangudi Police Station,
Pudukkottai District.

[Crime No.159 of 2017]

2)N.Vaithiyanathan

... Respondents

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for the entire records in Crime No.159 of 2017 on the file of the Inspector of Police, Alangudi Police Station, Pudukkottai, and quash the same as illegal.

For Petitioner	:	Mr.P.Ganapathi Subramanian
For R1	:	Ms.S.E.Vevonica Vincent
		Government Advocate (CrI.Side)
R2	:	Notice Dispensed with

ORDER

This Criminal Original Petition has been filed to call for the entire records in Crime No.159 of 2017 on the file of the Inspector of Police, Alangudi Police Station, Pudukkottai, and quash the same as illegal.

2.The impugned F.I.R. was registered on the complaint of the 2nd respondent/Inspector of Police, Alangudi Police Station, Pudukkottai District alleging that on 21.04.2017, the petitioner and 42 others conducted demonstration expressing their views against the establishment of Hydro Carbon plant. Therefore, a case was registered in Crime No.159 of 2017 by the respondent police for the alleged offence punishable under Sections 143, 188 and 341 I.P.C.

3.The learned counsel for the petitioner would state that the demonstration was conducted by the petitioner and others in a democratic and peaceful manner 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 CrI.OP (MD)No.3770 of 2012, dated 06.06.2018.



4.The learned Government Advocate (Crl.Side) appearing for the respondent/police would state that the petitioner and others joined together and conducted demonstration and raised slogans and caused inconvenience to the traffic and therefore, the FIR has been registered. After investigation, the Police have also filed final report before the concerned Judicial Magistrate Court.

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). In view of the order going to be passed, notice to the 2nd respondent is not necessary.

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 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

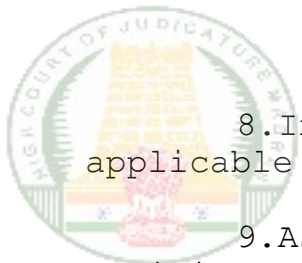
Fourth – By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right 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 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.



8. In my considered opinion, the above decision is squarely applicable to the facts and circumstances of the present case.

9. As rightly contended by the learned counsel for the petitioner, though the learned Government Advocate (CrI.Side) would state that the charge sheet has been filed and it is yet to be taken on file, 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 Crime No.159 of 2017 on the file of the Inspector of Police, Alangudi Police Station, Pudukkottai, are quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

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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.

<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The Inspector of Police,
Alangudi Police Station,
Pudukkottai District.

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

ORDER MADE IN

Crl.O.P (MD) No.13664 of 2020

DATED : 02.12.2020

SJ(CO)

AP(09/12/2020) 5P 3C