



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.14361 of 2020

and

Crl.M.P(MD)No.6722 of 2020

Ravi @ Ponpandi

Petitioner/ Accused No.1

Vs

State through by

1.The Inspector of Police,
Thazhamuthunagar Police Station,
in Crime No.98/2017,
Tuticoin District.

1strespondent/Complainant

2.A.Kanaga Bai

Inspector of Police,
Thazhamuthunagar Police Station,
Tuticorin District.

2nd Respondent/ Defacto
Complainant

PRAYER: Petition filed under Section 482 Code of Criminal Procedure, to call for records relating to the FIR in Crime No.98/2017, on the file of the 1st respondent and quash the same as against the petitioner.

For Petitioner : Mr.C.Susi Kumar

For R1

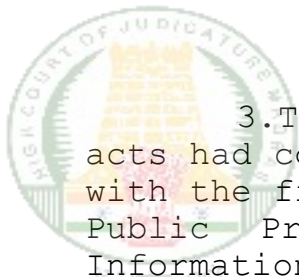
: Mr.V.Neelakandan

Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.98/2017, on the file of the 1st respondent.

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 13.03.2017, the petitioner along with 41 others, have unlawfully assembled and conducting agitation against deficiency in the ration shop and the same leads to the lodgment of complaint, resulting in registration of FIR in Crime No.98 of 2017 for the alleged offences punishable under Sections 143 & 188 of I.P.C.



3.The case of the respondent is that the petitioner by his acts had committed public nuisance. He had also caused interference with the free flow of general traffic. Hence, the learned Additional Public Prosecutor has strongly opposed to quash the First Information Report.

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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. 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. Therefore, the impugned proceedings in Crime No.98 of 2017 on the



file of the Inspector of Police, Thazhamuthunagar Police Station, Tuticorin is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

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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,
Thazhamuthunagar Police Station,
in Crime No.98/2017,
Tuticoin District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

ORDER MADE IN
CrI.O.P(MD)No.14361 of 2020
and
CrI.M.P(MD)No.6722 of 2020

09.12.2020

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