



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.12.2020

CORAM:

THE HONOURABLE MRS.JUSTICE J.NISHA BANU

CRL OP (MD) No.13929 of 2020

and Crl.M.P. (MD) No. 6388 of 2020

WEB COPY

K. Ramesh

... Petitioner/1st Accused

Vs.

1. The Inspector of Police
Pappakudi Police Station,
Tirunelveli District.
(Crime No. 329 of 2020)

...1st Respondent/Complainant

2. Bala Subiramanian

...2nd Respondent/Defacto
complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in Crime No. 329 of 2020 on the file of the 1st respondent and quash the same as against the petitioner.

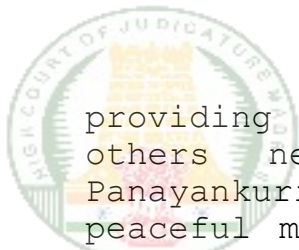
For Petitioner : Mr.R. Pon Karthikeyan
For R-1 : Mrs.S.E. Veronica Vincent
Government Advocate (Crl. Side)

O R D E R

This Criminal Original Petition has been filed to quash the First Information Report in in Crime No. 329 of 2020 on the file of the 1st respondent for the offences under Sections 147, 341 & 353 of IPC., as against the petitioner.

2. The case of the prosecution is that on 12.10.2020, around 11 a.m., the petitioner along with village people demanded for providing a common pipeline in their village. At that time, the petitioner and village people said to have waylaid the defacto complainant/Block Development officer and demanded for laying common pipe and prevented them from discharging their official duties, hence, the complaint. On the basis of the above said allegation, the first respondent police registered a complaint against the petitioner and others for the offences under Sections 147, 341, 353 of IPC in Crime No.329 of 2020.

3. The learned counsel appearing for the petitioner would state that the petitioner is a social activist and has been raising voice for public acause and public welfare, whenever injustice and inaction of the government machineries is noticed. The present case, the petitioner along with his village people demanded for



providing a common pipe line in their village. The petitioner and others never created any harsh protests and the entire Panayankurichi village people have been agitating their issue in a peaceful manner. He further would state that the Hon'ble Supreme Court of India has held that the right to freely assemble and to freely express one's view are constitutionally protected rights under Part III of the Constitution of India and such enjoyment can be only in proportional manner through a fair and non-arbitrary procedure provided in Article 19 of Constitution of India. He would further state that it is the duty of the Government to protect the rights of freedom of speech and assemble that is so essential to a democracy. According to Section 195(1)(a) of Cr.P.C., no Court can take cognizance of an offence under Section 188 of IPC., unless the public servant has written order from the authority. Further, he submitted that the petitioner or any other members had never involved in any unlawful assemble and there is no evidence that the petitioner or others restrained anybody. However, the officials of the respondent police had beaten the petitioner and others. When there was a lot of members involved in the meeting, the respondent police had registered this case only as against the petitioner and others. The learned counsel would further 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 and Jeevanantham vs. State reported in 2018 (2) K.W. (Crl) 606.

4. Per Contra, the learned Government Advocate (crl. Side) appearing for the respondent police would state that the petitioner along with others have waylaid the authorities and demanded for laying common pipe and prevented them from discharging official duty and there are specific allegations as against the petitioner to proceed with the trial. Further, she would state that Section 188 of IPC is a cognizable offence and therefore, it is the duty of the police to register a case. Through, there is a bar under Section 195(a)(i) of Cr.P.C., to take cognizance for the offence under Section 188 of IPC, it does not mean that the police cannot register FIR and investigate the case. More over, the petitioner is an habitual offender by committing this kind of crimes. Therefore, she vehemently opposed to quash petition and prayed for dismissal of the same.

5. Heard the learned counsel for the petitioners and the learned Government Advocate (Crl.Side) appearing for the first respondent.

6. The case of the prosecution is that on 12.10.2020, around 11 a.m., the petitioner along with his village people demanded for providing a common pipeline in their village. The defacto complainant/ Block Development Officer came to the place of occurrence and there, the petitioner and others have waylaid him and demanded for laying common pipe and prevented him from discharging his official duty. Hence, the first respondent registered a case



for the offence punishable under sections 147, 341, 353 of IPC, as against the petitioner and others.

7. Admittedly, the participants have demanded for laying common pipe line, for the reasons that they have not assured them for laying the pipe line it does not attract the offence under Section 147 of IPC., since there was no unlawful assembly. Further, the offence under Sections 341 & 353 of IPC are also not attracted as against the petitioner and others since they never restrained the defacto complainant from doing his official work.

8. If assembly of persons who expressed dissatisfaction of the governance and claiming for minimum rights that are guaranteed to a ordinary citizen are to be trifled by registering an FIR under Section 143 of IPC and filing a final report for the very same offence, no democratic dissent can ever be shown by the citizens and such prohibition will amount to violation of fundamental rights guaranteed under the Constitution, which has been relied in the decision reported in **2018 (2) K.W. (Cr1) 606, Jeevanantham vs. State.**

9. Though there is a prima facie case to register the FIR, the continuation of the same is not warranted as it is only a demand laying of a common pipeline in the village and therefore, I am inclined to quash the FIR.

10. Accordingly, the FIR in Crime No. 329 of 2020 on the file of the first respondent police is quashed and this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed. The order is applicable to the other person also who involved in the same offence.

Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ksa

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
Pappakudi Police Station,
Tirunelveli District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CRL OP. (MD) No.13929 of 2020
03.12.2020

VB (24.02.2021) 4P 3C