



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2020

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

Crl.O.P. (MD) .No.13722 of 2020

and

Crl.M.P. (MD)No.6312 & 6313 of 2020

Mr.A.Gnana Sekar

... Petitioner/Accused No.139

Vs.

State Rep by
The Inspector of Police,
Nesamaninagar Police Station,
Nagercoil,
Kanyakumari District.
(In Crime No.399 of 2007)

... Respondent/Complainant

Prayer This Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the charge sheet in C.C.No.316 of 2019, on the file of the Judicial Magistrate No.I, Nagercoil, Kanyakumari District and quash the same as illegal in respect of the petitioner.

For Petitioner	: Mr.G.Anto Prince
For Respondent	: Ms.S.E.Veronica Vincent Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed to call for the records pertaining to the charge sheet in C.C.No.316 of 2019, for the offences under Sections 143, 188, 285 of IPC r/w 7 (1) (A) CLA Act, on the file of the learned Judicial Magistrate No.I, Nagercoil, Kanyakumari District and quash the same against this petitioner as illegal.

2.When the matter is taken up for hearing, the learned counsel for the petitioner as well as the learned Government Advocate (Criminal Side) for the 1st respondent/Police would 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, wherein, this Court 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.

3.The petitioner herein also stands in the same footing and therefore, the above order is squarely applicable to the petitioner also. Therefore, the impugned proceedings in C.C.No.316 of 2019, on the file of the learned Judicial Magistrate No.I, Nagercoil, Kanyakumari District are quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /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 Judicial Magistrate-I,
Nagercoil, Kanyakumari District.

2.The Inspector of Police,
Nesamaninagar Police Station,
Nagercoil,
Kanyakumari District.

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

+1 CC to M/s.G. ANTO PRINCE, Advocate (SR-23575[F] dated
02/12/2020)

ORDER MADE IN
Crl.O.P. (MD) .No.13722 of 2020
and
Crl.M.P. (MD)No.6312 & 6313 of 2020
01.12.2020

SS (CO)

KM (18.12.2020) 4P 5C