



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.12.2020

CORAM:

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

Crl.O.P.(MD)No.15313 of 2020

and Crl.M.P(MD)Nos.7412 & 7414 of 2020

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Ariharan Kencian

... Petitioner/Accused No.13

vs.

1.The State rep by its
Inspector of Police,
Kudankulam Police Station,
Tirunelveli District-627 104
Crime No.300 of 2012

...1st Respondent/Complainant

2.R.Senthilkumar,
Village Administration Officer,
Vijayapathi Village,
Radhapuram Taluk,
Tirunelveli District.

...2nd Respondent/Defacto
Complainant

Prayer : This Criminal Original Petition has been filed under Section 482 Cr.P.C., to call for the entire records pertaining to C.C.No.58 of 2020 in Crime No.300 of 2012 on the file of the Judicial Magistrate, Radhapuram and quash the same insofar as the petitioner is concerned.

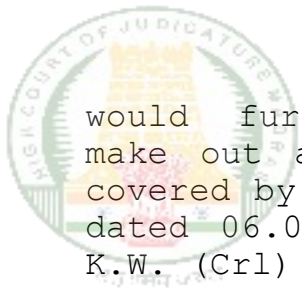
For Petitioner : M/s.Lourdu Paul Maurya

For R1 : M/s.S.E.Veronica Vincent
Govt.Advocate

O R D E R

This Criminal Original Petition has been filed to quash the charge sheet in C.C.No.58 of 2020 on the file of the Judicial Magistrate, Radhapuram.

2.The learned counsel for the petitioner would state that the allegation against the petitioner is that on 11.08.2012, the petitioner and others gathered and conducted protest against Kudankulam Nuclear Power Plant, without getting any permission. On the basis of the complaint given by the second respondent, a case was registered against the petitioner and other persons by the first respondent in Crime No.300 of 2012 for the offence under Sections 143, 188, 291, 124(A) r/w 149 IPC and Section 2 of the Prevention of Insults to National Honour Act, 1971. After investigation, the first respondent filed charge sheet in C.C.No.58 of 2020 before the file of the Judicial Magistrate, Radhapuram. The learned counsel



would further state that on the face of charge sheet, 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.

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3.The learned Additional Public Prosecutor appearing for the first respondent, on instructions, would state that on 11.08.2012, the petitioner and others gathered and conducted protest against Kudankulam Nuclear Power Plant, without getting any permission and caused disturbance to the free flow of public and he would fairly state that no violence or untoward incident had taken place.

4.Heard the learned counsel for the petitioner as well as the learned Additional Public Prosecutor appearing for the 1st respondent.

5.In the decision relied on by the petitioners 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.

6.In yet another relied on decision reported in 2018 (2) K.W. (CrI) 606, Jeevanantham vs. State, this Court has held as follows:—

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'In all the cases, the assembly of persons were made to express dissatisfaction of the governance and claiming for minimum rights that are guaranteed to a ordinary citizen. If such an assembly of persons 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.'

7.In my considered opinion, the above decisions are squarely applicable to present case on hand. The entire reading of the charge sheet does not make out any offence and it is not supported by any material evidence and therefore, I am inclined to quash the charge sheet.

8.Accordingly, the impugned C.C.No.58 of 2020 on the file of the Judicial Magistrate, Radhapuram is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

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/ /2021

Sub Assistant Registrar(CS)

Gns

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, Radhapuram.

2.The Inspector of Police,Kudankulam Police Station,
Tirunelveli District-627 104

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

+1 CC to M/s Lourdu Paul Maurya,Advocate,in SR.No.26987.

CrI.O.P. (MD)No.15313 of 2020
21.12.2020

(CK) CO

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