



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2020

CORAM:

WEB COPY

THE HONOURABLE MRS. JUSTICE J.NISHA BANU

**Crl.O.P. (MD)No.15179 of 2020
and Crl.M.P(MD)No.7301 of 2020**

Sahul Hameed @ Sakul Hameed

... Petitioner/Accused No.2

vs.

1.The State represented by
The Inspector of Police,
Vilakkuthoon Police Station,
Madurai City.
(Crime No.1101 of 2020)

... 1st Respondent/Complainant

2.Pandiarajan
S/o.Not Known,
Sub Inspector of Police-6287,
Vilakkuthoon Police Station,
Madurai.

... 2nd Respondent/Defacto Complainant

Prayer : This Criminal Original Petition has been filed under Section 482 Cr.P.C., to call for the records pertaining to the First Information Report in Crime No.1101 of 2020 on the file of the first respondent and quash the same.

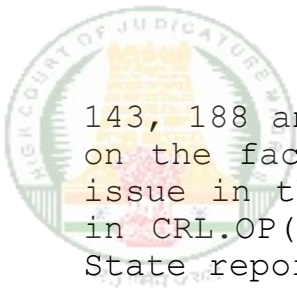
For Petitioner : Mr.A.Mohamed Yusuf

For R1 : Mr.V.Neelakandan
Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to quash the FIR in crime No.1101 of 2020 on the file of the first respondent.

2.The learned counsel for the petitioner would state that the petitioner is the member of the Social Democratic Party of India Organisation. The allegation against the petitioner is that on 05.08.2020, the petitioner and other accused conducted protest to stop the construction of Ramar Temple in Babar and for giving special status to Kashmir, without following the CORONA Pandemic Norms and social distancing. On the basis of the complaint, a case was registered against the petitioner and other persons by the first respondent in Crime No.1101 of 2020 for the offence under Sections



143, 188 and 270 IPC. 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.

WEB COPY

3.The learned Additional Public Prosecutor appearing for the first respondent, on instructions, would state that the petitioner protest to stop the construction of Ramar Temple in Babar and for giving special status to Kashmir without following the CORONA Pandemic norms and social distancing 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."

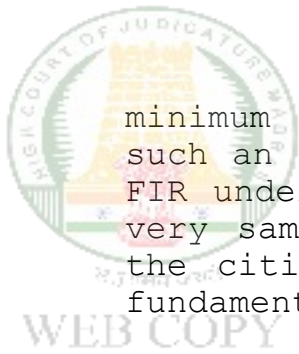
6.It is not the case of the prosecution that the petitioner exhibited criminal force or his object was to overawe by criminal force the Government officials. He did not resist the execution of any law or any legal process. He did not commit any criminal mischief or any criminal trespass or any other 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. (Crl) 606, Jeevanantham vs. State, this Court has held as follows:-

"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 FIR does not make out any offence and it is not supported by any material evidence and therefore, I am inclined to quash the FIR.

8.Accordingly, the impugned F.I.R in Crime No.1101 of 2020, on the file of the first respondent police is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/
Assistant Registrar(AD-II)

/True copy/

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.

To

- 1.The Inspector of Police,
Vilakkuthoon Police Station,
Madurai City.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.15179 of 2020
18.12.2020

GNS
PK/07.01.2021 : 4P/3C