



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :13.08.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.771 of 2021

TRB. Raja

... Petitioner

Versus

The State rep. by
The Inspector of Police,
Mannargudi Town Police Station,
Tiruvarur District

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in STC No.334 of 2020 on the file of the learned Judicial Magistrate, Thiruvarur and quash the same.

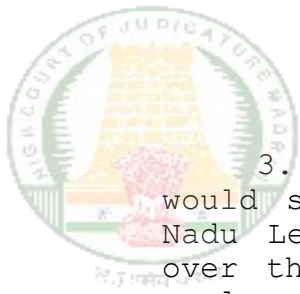
For Petitioner : Mr. N.R. Elango,
Senior Counsel,
for Mr. E. Raj Thilak

For Respondent : Mr.Hasan Mohamed Jinnah
State P.P.

ORDER

The petitioner, who is accused in STC No.334 of 2020, is facing trial for the offences under Sections 143 and 188 of IPC, had filed this quash petition.

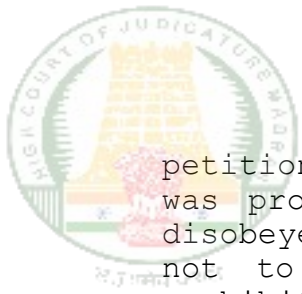
2. The gist of the case is that on 13.03.2017, when the Inspector of Police, Mannargudi Town Police Station was passing through the fair price shop at Panthaldi, there was a protest held by the petitioner, MLA of DMK along with Ganesan, the Town Secretary of DMK, without getting any permission. Totally 152 persons had assembled there and raised slogans against the Government of both Central and State. Further they have also made protest with regard to non-distribution of proper pulses, oils and other essential commodities. The Inspector of Police had warned the petitioner and others to disburse. The petitioner and others failed to heed to the warning of the Inspector of Police and hence, the case came to be registered.



3. The learned senior counsel appearing for the petitioner would submit that the petitioner is the member of the Tamil Nadu Legislative Assembly and they had raised some objections over the mismanagement in the fair price shop and thereby the real card owners/beneficiaries were not provided with the essential commodities. Hence, the card holders had demanded explanation from the shop people and there was some wordy altercation and heated exchange of words. Showing protest for the illegal act by the fair price shop personnels cannot be construed to be unlawful assembly and disobedience of public order. The ground therein were the card holders, who have gone there and questioned the mischievousness of the fair price shop employees. The promulgation order was not properly communicated. In this case, 3 witnesses, namely, LW1 Gunaseelan, SSI, LW2 Soundararajan, SSI, and LW3 Kazhaniyappan, Inspector of Police, were cited as witnesses. The said kazhaniyappan, Inspector of Police, suomotu registered the case, conducted investigation and had filed the final report in this case.

4. In support of his submission, he has relied upon the judgment of the Hon'ble Supreme Court in the case of C. Muniappan /vs/ State of Tamilnadu reported in 2010 (9) SCC 567, in which, the Hon'ble Supreme Court has held that no Court can take cognizance of offence under Section 188 of IPC except on the complaint by a public servant. Further this mandatory provision has not been followed. As far as offence under Section 143 IPC is concerned, mere violation or assembling at a public place cannot be declared as an unlawful assembling and no witness have stated that these persons have joined as an unlawful assembly and created any disturbance. Further it was a spontaneous crowd, who had assembled to protest against the non supply of essential commodities in the fair price shop. Showing protest is hallmark of democracy and it cannot be construed as an unlawful assembly and it is a fundamental right enshrined in the Constitution of India. Article 19(a) confers Freedom of Speech; Article 19(1)(b) confers Right to Assemble; 19(1)(d) permits peaceful march. The petitioner, being a Member of the Legislative Assembly, representative of the people was there to address the public grievance. The peaceful protest in non violent manner would no way attract the violation of any directions and rules.

5. The learned Government Advocate (Crl. side) appearing for the respondent would submit that the Inspector of Police, attached to the respondent police, was on his regular patrol duty, and during his duty, he found that more than 150 members of public have assembled. The petitioner along with one Ganesan was also present and there was every possibility of law and order problem. Hence the Inspector of Police had warned the



petitioner as well as the other persons to disburse since there was prohibitory order was in force. The petitioner not only disobeyed the same, he also asked other members of the public not to disburse. Thereby, the petitioner violated the prohibitory order. In this case, investigation has been completed. Now, charge sheet has also been filed with the statement of 3 witnesses. The trial Court, on considering the final report, finding prima facie materials, had taken the case on file and issued summons to the petitioner. The points raised in this petition have to be raised in the trial Court and not in this quash petition.

6. Considering the submissions and the perusal of the materials, it is seen that charge sheet has been filed against the petitioner under Section 188 and 143 of IPC. for offence under section 188 IPC. The Hon'ble Apex Court in the judgment cited supra has held that it is imperative that public servant has to lodge the complaint. The defacto complainant in this case, being a police officer, is not a competent person to lodge the complaint. Further, the Inspector of police, who lodged the First Information Report and he himself investigated the case and filed the charge sheet. The Apex Court clearly held that it would be better that the informant and the investigating officer are not same persons. If prejudice is pointed out by the accused, then the same to be considered. In this case, the occurrence is said to have taken place in the public place. Admittedly, no public witness has been examined and no reason given for non availability of the public witness. Apart from that for holding protest before the fair price shop , there is no materials to show that the unlawful assembly had committed, leading to riot, causing disturbance to the public and their movements. The proclamation of prohibitory order is not satisfactorily proved. Holding protest in a democratic manner cannot be deemed to be a criminal act and hence, this Court is inclined to allow the petition.

7. Considering the above circumstances, the Criminal Original Petition is allowed and the proceedings in STC No.334 of 2020 on the file of the Judicial Magistrate, Thiruvavur is quashed against the petitioner. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

mrp



To

1. The Judicial Magistrate,
Thiruvarur.

2. The Inspector of Police,
Mannargudi Town Police Station,
Tiruvarur District

3. The public prosecutor,
High Court, Madras.

CRL.O.P.No.771 of 2021

JP-II (CO)
CT(23/09/2021)