



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.07.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.Nos.5825 & 5826 of 2018  
and  
Crl.M.P.Nos.2939 & 2940 of 2018

Crl.O.P.No.5825 of 2018

R.Rajendran

...Petitioner

Vs.

State Represented by  
Inspector of Police,  
Hasthampatti Police Station,  
Salem District,  
Crime No.339 of 2015

...Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to Crime No.339 of 2015 on the file of the Inspector of Police, Hasthampatti Police Station, Salem District and quash the same.

Crl.O.P.No.5826 of 2018

R.Rajendran

...Petitioner

Vs.

State Represented by  
Inspector of Police,  
Town Police Station,  
Salem District.

...Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to C.C.No.113 of 2011 pending on the file of the Judicial Magistrate No.1, Salem District and quash the same.

For Petitioner  
(in both Crl.OP.Nos.)

: Mr.V.Balamurugane

For Respondent  
(in both Crl.OP.Nos.)

: Mr.A.Damodaran  
Government Advocate (Crl. Side)



## COMMON ORDER

The Criminal Original Petition in CRL.OP.NO.5825 OF 2018 is filed to call for the records pertaining to Crime No.339 of 2015 on the file of the Inspector of Police, Hasthampatti Police Station, Salem District and quash the same.

2.The Criminal Original Petition in CRL.OP.NO.5826 OF 2018 is filed to call for the records pertaining to C.C.No.113 of 2011 pending on the file of the Judicial Magistrate No.1, Salem District and quash the same. Since the petitioner in both the Criminal Original Petitions are one and the same and the issue in both the cases are similar in nature, hence, both the cases are dealt by a common order.

3.The gist of the case in Crl.O.P.No.5826 of 2018 is that on 27.05.2015, the Village Administrative Officer of Periyeri Village, Salem District had lodged a complaint stating that at about 12 noon behind the statue of Ambedkar, Rajendran being an Ex-MIA was leading a group and other accused viz., Deivalingam, Anwa, Kalaiamudan, Karthikeyan, Ramalingam, Kabeer, Maadhaiyan, Murugan, Guna @ Gunasekaran, Sarala Gunasekaran, Bhuvaneshwari, Akbar, Ilango, Kurunji, Amanbai @ Nasar Khan, Venkatachalam, Dhakidhin and other DMK party persons had assembled unlawfully and obstructed the free flow of traffic and raised slogans against the Mayor for not providing the proper drainage facility. Further they squatted on the road and obstructed the traffic and caused inconvenience to the public. The defacto complainant had informed them that the prohibitory orders were issued by the Commissioner of Police and asked them to disburse and further to continue the Dharna in some other place. Hence, the complaint.

4.The gist of the case in Crl.O.P.No.5825 of 2018 is that on 27.07.2011 had disrupted traffic and prevented the students and teachers from going to the school and further that they had conspired to burn buses. The petitioner had assembled unlawfully and obstructed the free flow of traffic and caused inconvenience to the public and raised slogans against the Government for creating awareness amongst the general public about the Samacheer Kalvi System and seeking for effective and expedited implementation of the Samacheer Kalvi Education System and not providing the proper drainage facility. The complainant had informed them that the prohibitory orders were issued by the Commissioner of Police and asked them to disburse and further to continue the Dharna in some other place. Hence, the complaint.

5.The contention of the petitioner is that the petitioner belonging to a political party and the demonstration conducted by the petitioner was very peaceful and conducted protest for



not taking proper care of drainage, which lead to free flowing of the sewage water on the road and caused health hazards to the public. Further in creating awareness amongst the general public about the Samacheer Kalvi System meeting held. Despite several representation made to the concerned authorities no action taken to highlight the difficulties faced by the public and to wake up the Government officials, who are in slumbers. Such protest are held by political parties, which is a part of democracy. Now the same is projected though the petitioner had obstructed the public and transport. No public witnesses given any complaint and no public was affected, due to the protest held by the petitioner and others. Protest is the Hallmark of Democracy. The petitioner and others only raised slogans which is their fundamental right, which cannot be denied.

6.The learned Government Advocate [Crl. Side] submits that in this case the petitioner is a former MLA and the defacto complainant is a Village Administrative Officer. The defacto complainant and the Revenue Inspector informed the petitioner and other persons to disburse and not to obstruct the transport and cause inconvenience to the public. The petitioner refused to disburse, on the other hand, they squatted on the road and raised slogans and also caused disturbance to the public.

7.He further submitted that the petitioner belonging to the opposing party to gain political mileage, conducted dharna. The petitioner can send their representative to meet the concerned persons and to meet the elected representative and inform the difficulties faced by the public and not to cause inconvenience to the public and not be a cause for law and order problem. The petitioner and others without obtaining permission from the authorities concerned have formed themselves into an unlawful assembly restrained others and caused public disturbance.

8.Considering the rival submissions and on perusal of the materials it is an admitted fact that the petitioner is a former MLA belonging to a political party, who conducted dharna for not taking proper care of drainage, which leads to free flowing of the sewage water and caused health hazards to the public, further for creating awareness amongst the general public about the evils of Samacheer Kalvi System, Protest held which is the Hallmark of Democracy. The petitioner and others raised protest which is their fundamental right, no public gave any complaint and no public were affected, due to the protest conducted by the petitioner. Hence, this Court finds that the petitioner and others have only raised their objection with regard to the drainage problem flow of sewage water in the road causing health hazard. Raising slogans against the Government itself would not amount to any commission of offence, which is a fundamental right under Constitution of India.



9.The petitioner and others raised slogans against the Government for not taking proper care for the welfare of the public hence protest held further to create awareness amongst the general public about the Samacheer Kalvi System a road side meeting held. Admittedly in these cases, the occurrences had taken place in a public place in public view, strangely no public or independent witness examined by the prosecution, which causes serious doubt on the veracity of the complaint. Further, this Court in the case of "Jeevanandham and others Vs. State Rep. by Inspector of Police and another reported in (2018) 2 LW CrI. 606" had clearly held that the police officials are not empowered to register a case under Section 188 IPC and the same is barred under Section 195 Cr.P.C. There is no material to show that there was any promulgation of prohibitory orders which was communicated to the public and there was any disobedience by the petitioner. Further, in consequence to the protest, the prosecution failed to show whether any trouble occurred. Thus, the respondent Police did not follow the guidelines issued by this Court in Jeevanandham (Cited Supra). In several cases, this Court quashed the proceedings against the accused/protester on similar ground.

10.In the result, the proceedings both in Crime No.339 of 2015 on the file of the Inspector of Police, Hasthampatti Police Station, Salem District and in C.C.No.113 of 2011 pending on the file of the Judicial Magistrate No.1, Salem are hereby quashed against the petitioner.

11.Accordingly, these Criminal Original Petitions are allowed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-  
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

ah  
To

1. The Judicial Magistrate No.1,  
Salem District.
2. The Inspector of Police,  
Hasthampatti Police Station,  
Salem District.



3. The Inspector of Police,  
Town Police Station,  
Salem District.

4. The Public Prosecutor,  
High Court, Madras.

+2ccs to Mr.V.Balamurugan, Advocate, S.R.No.35917,35918

Cr1.O.P.Nos.5825 & 5826 of 2018  
and Cr1.M.P.Nos.2939 & 2940 of 2018

GPL[co]  
NSK 13/09/2021