



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 17.04.2021

PRONOUNCED ON : 02.07.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOAN

Crl.O.P.(MD)No.5438 of 2021

and

Crl.MP(MD)N0.3137 & 3139 of 2021

WEB COPY

- 1.Murugesan
- 2.Karuppaiah
- 3.Muneeswaran
- 4.Nagu
- 5.Chithravelu
- 6.Manikandan
- 7.Kalimuthu
- 8.Chithraiselvi
- 9.Anjumuthu
- 10.Pagampriayl
- 11.Kamatchi
- 12.Neela
- 13.Muthumari
- 14.Arasappan
- 15.Anjammal
- 16.Kaliammal
- 17.Ayyanar
- 18.Anjammal
- 19.Muthu
- 20.Krishnan

... Petitioners/Accused Nos.1 to 20

Vs.

- 1.State Rep by
The Inspector of Police,
Devakottai Taluk Police Station,
Devakottai,
Sivagangai District.
(Criem No.73 of 19)

... 1st Respondent/Complainant

- 2.The Village Administrative Officer,
Kandiyur Group,
Devakottai Taluk,
Sivagangai District.

... 2nd Respondent/Defacto
Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in C.C.No.44 of 2019 on the file of the learned Judicial Magistrate, Devakottai and quash the same.



For Petitioner : Mr.M.Ramu
For R1 : Mr.R.M.Anbu Nithi,
Additional Public Prosecutor.

ORDER

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This Criminal Original Petition is filed to quash the proceedings in C.C.No.44 of 2019 on the file of the learned Judicial Magistrate, Devakottai.

2.The case of the prosecution:-

(i) On 22.04.2019, at about 10.00 a.m, the petitioner along with other persons, assembled unlawfully, near Kannankudi Perumal Temple, Devakottai, to Karur main road and staged a protest and prevented the traffic and cause nuisance. So, during the protest, the accused Nos.4, 7, 9 and 10 have abused and criticised the other community people. In the course of time, the accused Nos.1, 2 and 5, indicate the violence against the other community people by their speech.

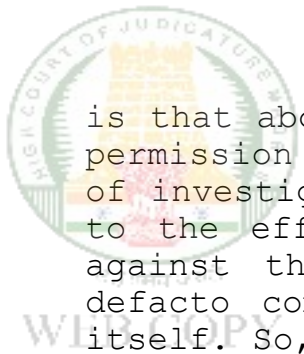
(ii) In pursuance of which, based upon a complaint given by the defacto complainant, a case in Crime No.73 of 2019 for the offences under Sections 143, 341, 290, 504 and 505 (1) (c) IPC was registered. Based upon the complaint given by the second respondent, first respondent took up the investigation and collected the materials and recorded the statement of the witness and filed a final report, which was taken on file in C.C.No.44 of 2019.

3. Seeking quashment of the final report, the petitioners, who are arrayed as accused before the Trial Court, have preferred this petition.

4. Heard both sides.

5. From the arguments advanced on either side and a perusal of records show that on 22.04.2019, at about 10.00 a.m, the petitioners assembled in the place of occurrence to make a protest over the defamatory statements alleged to have been spread by a particular community people against the petitioner's community. So, it is seen that the petitioners want to make a protest against the insult that has been made by the other community people. The petitioners ought to have lodge a complaint against those persons, who have spread the defamatory statements inspite of making a protest.

6. But, one fact that has been brought to the notice of this Court is that when the defacto complainant appeared in the place of occurrence, he did not hear any abusul or insulting or defamatory statements by the accused persons namely, the petitioners herein as against the other community people. What he stated in the complaint



is that above 150 male and 50 female people, without getting proper permission from the Police, staged a protest. But, during the course of investigation, some improvements have been made by the witnesses to the effect that the petitioners indulged in inducing violence against the other community people. If really that was so, the defacto complainant would have stated the same, in his complaint itself. So, the statements, during the investigation shows that some improvement has been made with regard to the offence that has been made in the final report.

7. The case was originally registered only under Sections 143, 341 & 290 IPC. Later, it was altered into the offences under Sections 143, 341, 290, 504 and 505 (1) (c) IPC. So, the considered view of this Court that peaceful agitation is permissible under the democratic set up. That cannot be construed as unlawful, unless the first respondent is able to say that it turned violent, but, there is no such averments.

8. For attracting the offence under Section 143 IPC, the prosecution must show *prima facie* that it is an unlawful assemble as defined under Section 141 IPC.

9. Section 141 IPC defines 'unlawful assembly' in the following words:-

" **141.Unlawful assembly** - An assembly of five or more persons is designated and '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.

Explanation - An assembly which was not unlawful assembled, may subsequently become and



unlawful assembly."

10. So, from the above observation, the assembly cannot be termed as unlawful one. There is also no material collected in the course of investigation, to the effect that the ban order under Section 32 of Police Act, was also in force. So, none of the ingredients are attracted.

11. Next allegation is that the petitioners committed the offence under Section 341 IPC. For attracting this offence also, the ingredients of Section 339 IPC must be fulfilled.

"339. Wrongful restrain - Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person."

12. Reading of the final report shows that none of the ingredients are also attracted. It is not the case of the prosecution that the petitioners obstruct the movements of the traffic as well as public in the place. They have staged only a protest or agitation.

13. Next allegation is that the petitioners have committed the offence under Section 290 IPC.

"290. Punishment for public nuisance in cases not otherwise provided for - Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees."

14. But, it is a non-cognizable offence. The Police registered a case and filed a final report without getting permission of the learned Judicial Magistrate concerned.

15. The next offence is under Section 505 (1) (c). It defines,

"505. Statements conducting to public mischief
(1) (c) with intent to incite, or which is likely to incite, any class or community of persons to commit any offence against any other class or community, shall be punished with imprisonment which may extend to (three years) or with fine, or with both."

16. The allegation is that some of the petitioners indulged in inducing violence against the another community people. But, there is no material collected, during the course of investigation to show that the protest was conducted only with an intention to incite the people to commit offence against the particular community. So, the protest conducted with an intention only to stage their grievance against the alleged defamatory statements issued through the social



media by certain persons. So, it is seen that they had no criminal intention to indulge in any offence. The intention was only to stage a protest against the persons, who indulged in spreading the defamatory statements. So, this cannot be considered as unlawful.

17. During the course of argument to a specific question, the learned counsel for the petitioner would submit that after protest, no further escalation was noticed. So, the weight facts and circumstances of the case, clearly shows that it was only a peaceful protest or demonstration, against the defamatory statements circulated in the Social Media. As mentioned earlier, some development has been made, during the course of investigation, which was not spoken by the defacto complainant. If such an utterance took place, even at the initial stage itself, the defacto complainant mentioned those facts in the complaint. But, no such allegations.

18. I am of the considered view that further continuation of this criminal proceedings may cause escalation of problems between these two community people, which may not be in the interest of Society. So, I am of the considered view that this is the weighty reason which weighs much upon the mind of this Court in considering the quashment request and for maintaining peace, the termination of the criminal prosecution is required. So, this prosecution is liable to be quashed on the above and this will put an end to communal tension between two groups.

19. Moreover, it is not a case of the prosecution that because of the protest, violence took place. It is seen that it is a peaceful protest. But, during the course of investigation, some improvements have been made.

20. Considering the totality of the allegation, no purpose will be served. So, the proceedings in C.C.No.44 of 2019 on the file of the learned Judicial Magistrate, Devakottai, is quashed and the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

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

<https://hccservicesportal.hccservices.gov.in/hccservices/> of the advocate/litigant concerned.



To

- 1.The Judicial Magistrate,
Devakottai.
- 2.The Inspector of Police,
Devakottai Taluk Police Station,
Devakottai,
Sivagangai District.
- 3.The Village Administrative Officer,
Kandiyur Group,
Devakottai Taluk,
Sivagangai District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.RAMU, Advocate (SR-21305[F] dated 06/07/2021)

Crl.O.P. (MD)No.5438 of 2021
and
Cr1.MP (MD)N0.3137 & 3139 of 2021
02.07.2021

MJ(CO)
RK(30.07.2021) 6P 6C