



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 16.04.2021
DELIVERED ON : 21.05.2021

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGOVA**

CrI.O.P. (MD)No.5310 of 2021
CRL.M.P. (MD) .No.3064 of 2021

WEB COPY

- 1.Chandramary
 - 2.Jackson @ Jackson Duraimani
 - 3.Wilson @ Wilson Packiyathurai
 - 4.Nelson @ Nelson Duraisingh
 - 5.Vincent @ Arul Vincent @ Arul Vincent Stalin
 - 6.Ranjith @ Switson Ranjith Salamon
 - 7.Murugan
 - 8.Perumal
- ... Petitioners

Vs.

- 1.The State rep.by
The Inspector of Police,
Pudukottai Police Station,
Thoothukudi District.
 - 2.E.Subbaiah,
Special Sub Inspector of Police,
Pudukottai Police Station,
Thoothukudi District.
- ... Respondents

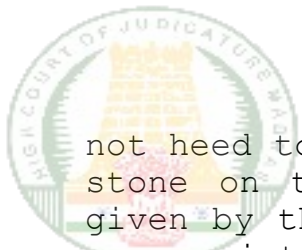
PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in C.C.No.421 of 2017 pending on the file of the Judicial Magistrate No.III, Thoothukudi and quash the same.

For Petitioners : Mr.M.Sam Eugene Jebakumar
For Respondents : Mr.R.Srinivasan
Government Advocate(crl.side)

O R D E R

This petition has been filed seeking quashment of C.C.No.421 of 2017, pending on the file of the Judicial Magistrate No.III, Thoothukudi.

2. The case of the prosecution before the Trial Court is that the second respondent was working as Special Sub-Inspector of Police and she lodged a complaint to the first respondent on 22.10.2011 stating that the accused persons, without getting permission from the Police, had gone procession to celebrate victory in Panchayat election with drum beats and disturbed the traffic and public. Therefore, the police team advised them to disperse. But, they did



not heed to the advise. Abusing the police team, one Jackson pelted stone on the second respondent herein. Hence, the complaint was given by the second respondent to the first respondent and the case was registered in Crime No.475 of 2011 for the offence punishable under Sections 147, 188, 353 & 336 of IPC. Based upon which, the investigation was undertaken and the statement of witnesses were recorded, the final report was also filed before the concerned Court which was taken on file as C.C.No.421 of 2017. Thereafter, the present petition has been filed by the petitioner mainly on the ground that **as per the judgment of this Court in the case of Jeevanandham and others vs. Inspector of Police, Velyuthampalayam Police Station, Karur District and another reported in (2019) 1MLJ (Crl) 36**, the police is not permitted to register a complaint for the offence punishable under Section 188 IPC. The other offences mentioned in the First Information Report are not attracted, since none of the grounds mentioned in the First Information Report are attracted against these petitioners, the same is liable to be quashed.

3. Heard both sides.

4. From the records, it is seen that on 22.10.2011, these petitioners had celebrated victory in Panchayat election, without getting proper permission from the concerned Authority. Further, they did not indulge any illegal activities. A celebration of victory will not amount to an illegal act. Moreover, it cannot be construed as unlawful assembly also. So, the offence under Section 147 IPC will not be attracted. An unlawful assembly is defined under Section 141 IPC which reads as under:

"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, 1[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 when it assembled, may subsequently become an unlawful assembly”.

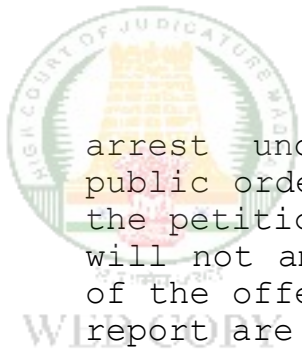
5. In view of the above definition, I am of the considered view that the act of the petitioners will not come under the above provision. The other allegation made against the petitioner is that they did not obey the advice made by the police team. So, on that ground also, it will not amount to prevent the Police from discharging their official duty. In this regard, it is relevant to consider Section 353 IPC which reads as under:

“Assault or criminal force to deter public servant from discharge of his duty.—Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

6. On reading of the above provision, it is seen that the assault or criminal force is punishable. But, in this case, the petitioners have not indulged in any such assault or criminal force. Further, the defacto complainant/second respondent, in his complaint, stated that one of the petitioners namely Jackson pelted stone on her, due to which, he sustained injuries. But, no material has been collected by the Investigating Officer to show that she sustained injury. Mere bald allegation will not amount to an offence under Section 353 IPC. For the same reason, Section 353 IPC will not be attracted. Regarding Section 188 IPC, this Court held that “Section 188 IPC is a non-cognizable offence and a Police Officer, by virtue of the powers conferred under Section 41 of Cr.P.C. which is preventive in nature, will have the Authority to take action under Section 41 of Cr.P.C, when a non-cognizable offence under Section 188 IPC is committed in his presence or where such action is required, to prevent such person from committing an offence under Section 188 of IPC”.

7. Series of guidelines have been issued in the above judgment. Therefore, the cognizance taken by the Judicial Magistrate for the above said offence is not legal.

8. In respect of filing the First Information Report against the petitioners, the police team ought to have made a preventive



arrest under Section 41 of Cr.P.C, if they have violated any law or public order. But, it is only a procession which was undertaken by the petitioners for celebrating victory in Panchayat election and it will not amount to unlawful assembly and illegal activity. So, none of the offences mentioned in the First Information Report and final report are maintainable and attracted against these petitioners. So, the charge sheet pending on the file of the Judicial Magistrate No.III, Thoothukudi is liable to be quashed.

9. Accordingly, the Criminal Original Petition stands allowed and C.C.No.421 of 2017 pending on the file of the Judicial Magistrate No.III, Thoothukudi is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ssb

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 No.III, Thoothukudi

2.The Inspector of Police,
Pudukottai Police Station,
Thoothukudi District.

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

Cr1.O.P. (MD)No.5310 of 2021
CRL.M.P. (MD) .No.3064 of 2021
21.05.2021

—
KK(16.06.2021) 4P 4C