



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 21.09.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.6008 of 2021

and

Crl.MP(MD)No.3458 of 2021

WEB COPY

Anandasamy

... Petitioner/Accused Rank Not known

Vs.

1.The State Represented by
The Inspector of Police,
Thilagar Thidal Police Station,
Madurai City,
Madurai District.
(Crime No.855 of 2017) ... 1st Respondent/Complainant

2.Mr.Sundarapandian ... 2nd Respondent/Defacto Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining in Crime No.855 of 2017, dated 02.09.2017, for the offence under Sections 143 & 188 of IPC on the file of the 1st respondent and quash as illegal.

For Petitioner : Mr.R.Ganesh Prabu
For R1 : Mr.K.Sanjai Gandhi
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition is filed to quash the records pertaining in Crime No.855 of 2017, pending on the file of the first respondent, dated 02.09.2017.

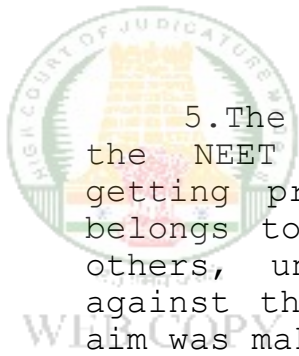
2.The case of the prosecution in brief:-

On 02.11.2017, at about 10.55 a.m, the petitioner along with other persons, numbering about 22, staged a protest or agitation over the suicide of one Anitha. Contemning the Central Government as well as the State Government, they shouted slogans against the Prime Minister and the then Chief Minister of Tamilnadu. Based upon the suo-motu registration of the First Information Report in Crime No.855 of 2017, investigation has been undertaken for the offences punishable under Sections 143 and 188 of IPC.

3. Seeking quashment of the First Information Report, this petition is filed mainly on the ground that the allegations made in the First Information Report, does not attract any of the ingredients of the offence alleged against the petitioner.

4. Heard both sides.

<https://hcservices.ecourts.gov.in/hcservices/>



5.The case involves the protest made by the petitioner against the NEET Entrance Exam. On 02.11.2017, at about 10.55 a.m, without getting proper permission from the authorities, the petitioner, belongs to one organisation called 'Makkal Athikaram', along with others, unlawfully assembled in the place and shouted slogans against the Central Government and the State Government and their aim was make a protest over the NEET Entrance Exam.

6. According to the petitioner, he does not deny the above said protest. But, however, stated that the name of the petitioner was not mentioned in the First Information Report.

7. A copy of the First Information Report has been produced. Wherein, it has been stated that on 02.11.2017, at about 10.55 a.m, under the leadership of one Maruthu, the people numbering about 22, unlawfully assembled in the place and made a protest. Thereafter, they were arrested at 11.15 a.m.

8. The first allegation is that the petitioner committed offence under Section 143 IPC. 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



when it 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 insofar as the 143 IPC is concerned.

11. The second allegation is that the petitioner committed offence under Section 188 IPC. For attracting this offence also the ingredients of Section 188 IPC must be fulfilled.

12. It is a common knowledge that against the NEET Entrance Exam, several protests, demonstrations and agitations took throughout the State. So, right to protest is well recognised. So, the only qualification is that it should not end in any violation.

13. A reading of the First Information Report shows that they made a protest by shouting slogans against the NEET Entrance Exam and the Government and it is seen that no untoward or criminal act was followed. No doubt, protesting, without getting any proper permission, is not proper. They also created nuisance in that place. But, entire reading of 161 statement, recording during the course of investigation, shows that the identity of a person, who are involved in the occurrence, was not properly investigated. None of the statement recording during the course of investigation, did not speak about the identification of the person, who involved in the demonstration or protest. Then, how the petitioner roped in the above said offence, is not understandable.

14. From the reasons stated above, no *prima facie* is made against the petitioner to proceed the case and it will amount to clear abuse of process of Court and law. So, this petition is liable to be quashed.

15. Accordingly, the First Information Report in Crime No.855 of 2017, pending on the file of the first respondent, dated 02.09.2017, is hereby, quashed and the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

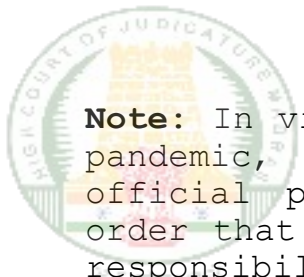
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Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



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.

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To

1. The Inspector of Police,
Thilagar Thidal Police Station,
Madurai City,
Madurai District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD) No.6008 of 2021
and
Crl.MP (MD) No.3458 of 2021
21.09.2021

NSN (CO)
KB (29.09.2021) 4P 3C