



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 21.09.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.5716 of 2021

and

Crl.MP(MD)No.3306 of 2021

WEB COPY

R.Venkateshwar

... Petitioner/Accused No.1

Vs.

1.The State rep through

The Inspector of Police,

Peravurani Police Station,

Thanjavur District.

(Crime No.31 of 2018)

... 1st Respondent/Complainant

2.B.Ramamoorthy

... 2nd Respondent/Defacto
Complainant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in connection with the Final Report filed in S.T.C.No.1402 of 2018 on the file of the learned Judicial Magistrate, Pattukottai, Thanjavur District, and quash the same against this petitioner as illegal.

For Petitioner : Mr.M.Ajmalkhan, Senior Advocate
for M/s.Ajmal Associates

For R1 : Mr.K.Sanjai Gandhi
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition is filed to quash the proceedings in S.T.C.No.1402 of 2018, on the file of the learned Judicial Magistrate, Pattukottai, Thanjavur District.

2.The case of the prosecution in brief:-

On 17.03.2018, at about 2.30 p.m, in front of the Peravurani Police Station, Thanjavur District, under the leadership of the first accused, other accused numbering about 13, unlawfully assembled and tried to disturb the public transport and public. They also made a road roko agitation. They also abused the police officials in a filthy language. So, based upon a complaint given by the second respondent herein, a case in Crime No.31 of 2018 for the offence punishable under Sections 143, 188, 341, 294 (b) and 506 (i) IPC was registered. After completing the investigation process, final report was filed against all the accused persons.

<https://hcservices.courts.gov.in/hcservices/> 3. On the basis of the quashment of the final report, this petition is



filed mainly on the ground that none of the allegation mentioned in the final report, attract any of the ingredients of the offences, against this petitioner.

4. Heard both sides.

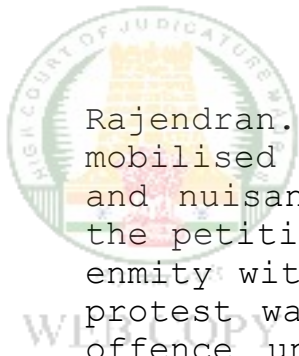
5. The petitioner, who is arrayed as first accused in Crime No.31 of 2018 is a practicing Advocate. Reading of the entire materials shows that the petitioner had lodged a complaint, before the first respondent Police Station, on behalf of his client. It appears that the first respondent informed the petitioner that it is a civil dispute and after enquiry, further action will be taken. But, without hearing the advise of the first respondent, he demanded registration of First Information Report immediately. It is alleged that the petitioner by gathering the above said co-accused, staged a protest in front of the Police Station by disturbing the traffic etc.,

6. The learned counsel for the petitioner would submit that he is in no way involved in the occurrence and has been roped in the offence for the simple reason that he was an Advocate for the complainant in that issue. The petitioner is also having office in front of the Police Station.

7. It is seen that on 05.07.2017, one Ramachandran gave a complaint. But, there was no action. So, he filed a petition under Section 156 (3) Cr.P.C seeking direction and that was allowed in Crl.MP.No.4567 of 2017. But, that order was not complied with. Later, the above said Ramachandran filed Crl.OP(MD)No.19110 of 2018 seeking direction to register First Information Report. Thereafter only, a case was registered in Crime No. 96 of 2019. So, because of this development, there was enmity between the Inspector of Police by name, B.Ramamoorthy and the petitioner. Only on that motive, the present case has been registered. But, the total factual aspects cannot be gone into in this petition. But, the background of the above said event can be taken into account for considering this petition.

8.The date of occurrence is stated to be 17.03.2018. As per the information furnished by the petitioner, Crl.OP(MD)No.19220 of 2018 was ordered, on 29.10.2018. So, one week time was granted to the police to register the case. Subsequent that, as stated above, a case in Crime No.96 of 2019 was registered on 15.06.2019.

9. According to the learned counsel for the petitioner, this is enmity between the first respondent and him. As mentioned earlier, this factual aspects cannot be gone into in this petition. Even reading of the First Information Report shows that the petitioner acted on behalf of the complainant namely,



Rajendran. The allegation of the State is that the petitioner mobilised the other people and staged a protest by making trouble and nuisance. So, except acting as an Advocate, it appears that the petitioner has no personal interest either in the complaint or enmity with the first respondent herein. So, considering that the protest was made under the leadership of the petitioner, how the offence under Sections 143, 188 and 341 were attracted is not understandable.

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

11. 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 an unlawful assembly."

12. But, reading of the First Information Report as well as the final report shows that none of the ingredients mentioned under Section 141 IPC is attracted. Similarly, for 188 IPC also, it is a non-cognizable offence, even though, it is combined with Section 341 IPC.



13. The facts remains that there is no complaint against the petitioner from the public stating that they have prevented them from proceeding in particular direction. So, the offence under Section 341 IPC is not attracted.

14. The next allegation is that he used filthy language and criminally intimidated the Sub-Inspector of Police. On the basis of the facts and circumstance of the case, it is an exaggerated allegation. No doubt. Staging road roko agitation, demanding registration of First Information Report, might have been avoided. The petitioner herein, being, a Advocate would have advised his client to make a petition through appropriate proceedings and at the same time, it is seen that it is a spontaneous assembly and the person demanding action. As mentioned earlier, the petitioner acted only as an Advocate. Here, as a professional, he acted for the complainant and except that, he has no personal interest in the issue.

15. I am of the considered view that the professional should not be clamped with criminal prosecution for having acted in aid of his client. So, this sole ground, which weighs upon the mind of the Court to order discontinuation of the proceedings. So, the case, which is registered against the petitioner is liable to be quashed.

16. Accordingly, the proceedings in S.T.C.No.1402 of 2018, on the file of the learned Judicial Magistrate, Pattukottai, Thanjavur District, is hereby, quashed insofar as the petitioner alone is cancelled and the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

17. But, however, the benefit that has been extended to the petitioner will not apply to the other accused persons. This petition is allowed only on the ground that the petitioner acted as an Advocate. So, it is made clear that the benefit of quashment and the ground of quashment shall not be made applicable to the other accused persons. So, the trial may go on in respect of the other accused persons as per law.

Sd/-

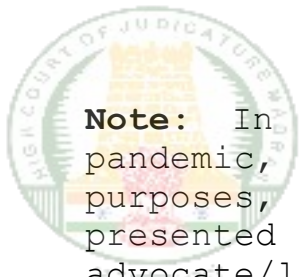
Assistant Registrar (CS I)

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Sub Assistant Registrar (CS)

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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 Judicial Magistrate,
Pattukottai,
Thanjavur District.
2. The Inspector of Police,
Peravurani Police Station,
Thanjavur District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.5716 of 2021

and

Crl.MP (MD)No.3306 of 2021

21.09.2021

MMS (CO)

SB/SKN (22.11.2021) 5P 4C