



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE ON WHICH RESERVED : 16.06.2021

DATE ON WHICH PRONOUNCED : 25.06.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.7822 of 2021

and

Crl.MP(MD)No.3996 of 2021

WEB COPY

1.J.Sikkanthar Batcha

2.Ubedullah

3.S.Syed Ibrahim

4.H.Jafar Hussain

5.A.Nawaz Khan

6.J.Mohamed Yasin

... Petitioners/Accused Nos.1 to 6

Vs.

1.State rep by

The Inspector of Police,  
South Gate Police Station,  
Madurai District.

... 1<sup>st</sup> Respondent/Complainant

2.S.Vanniyan

... 2<sup>nd</sup> Respondent/Defacto  
Complainant

Prayer:Criminal Original Petition is filed under Section 482 Cr.P.C., to call for records of the impugned charge sheet in C.C.No.837/2020 on the file of Judicial Magistrate No.IV, Madurai and quash the same.

For Petitioners : Mr.G.Prabhu Rajadurai  
For R1 : Mr.R.M.Anbu Nithi,  
Additional Public Prosecutor.

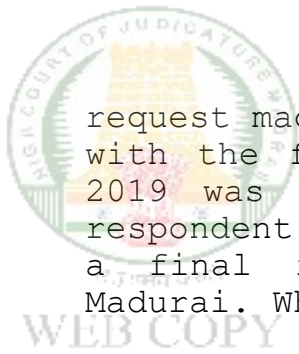
#### ORDER

This Criminal Original Petition is filed to quash the impugned charge sheet in C.C.No.837/2020 on the file of Judicial Magistrate No.IV, Madurai.

#### 2.The case of the prosecution:-

(i) The second respondent is the defacto complainant. He was working as a Head Constable in B5, South Gate ( Law & Order) Police Station, Madurai City. On 22.07.2019, at about 10.15 a.m, when he was in patrolling duty near the Vadamalaiyan Hospital, Chinnakadai Junction, South Marret Street, South Gate, Madurai City, he found the petitioner along with some other persons conducted agitation against the Madurai Corporation for non supply of sufficient drinking water. They staged a road roko agitation. He informed the petitioners that it is the main route, traffic is also high and also

<https://hdservices.emudstg.in/hdservices/>



request made by him. So, with this allegation, he lodged a complaint with the first respondent. Upon which, a case in Crime No.282 of 2019 was registered. Investigation also undertaken by the first respondent police and after completing the investigation, they filed a final report before the learned Judicial Magistrate No.IV, Madurai. Which was taken on file in C.C.No.837 of 2020.

3. Seeking quashment of the final report, this petition is filed mainly on the ground that what was demanded is drinking water to the locality to which the petitioners belong, which can not be construed as illegal or unlawful. Moreover, none of the offences mentioned in the final report attract any of the ingredients mentioned in those Sections against these petitioners. He would also rely upon the judgment of this Court in Jeevanandham and others Vs The Inspector of Police, Velayuthampalayam Police Station Karur District, reported in 2018 (2) L.W.(Crl.) 606 and further judgments.

4. Heard both sides.

5. It is not disputed by the learned counsel for the petitioners that on 22.07.2019, at about 10.15 a.m, staged a road roko agitation near the Vadamalaiyan Hospital, Chinnakadai Junction, South Marret Street, South Gate, Madurai City, demanding sufficient supply of water to the locality to which the petitioners belong. So, according to the learned counsel for the petitioner, it is a peaceful assembly and agitation was also peaceful and they did not cause any nuisance to the public or indulged in breach of peace in that area. Water is a basic necessity, which the Corporation bound to supply sufficiently.

6. A similar situation in Crl.OP.No.21965 of 2019, dated 21.08.2019 in M.Nithyanandam Vs. State and Other, this Court has quashed the final report, which was filed under Sections 143, 341 and 283 IPC. In that case, the village people gathered in the place of occurrence and sat on the public road and staged a road roko agitation demanding supply of water. This Court by observing that food, water and shelter are the basic necessities for human life. Protesting and demanding basic amenities through a peaceful agitation cannot be construed as unlawful. As mentioned earlier, it may not be construed or consider as illegal demand.

7. So, the consistent view of this Court that peaceful agitation or protest demanding basic requires or necessities is permissible under the democratic setup. 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. 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."

9. 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.

10. The second allegation is that the petitioners committed offence under Section 341 IPC. For attracting this offence also the ingredients of Section 339 IPC must be fulfilled.

11. Regarding the allegations 353 IPC, a mere bald averments made to the effect that the petitioners challenged the defacto complainant and other police officials dared to remove them. So, this will not attract any of the ingredients mentioned in Section 353 IPC and it is also extracted hereunder:-

" 353. 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."

- So, this bald allegation will not attract the ingredients of the Section 353 IPC.

12. The next offence is 506 (i) IPC. Here also, in the final report it has been mentioned that the defacto complainant and other police officials were criminally intimidated by the petitioners by showing their hands. Section 503 IPC defines 'criminal intimidation' in the following words:-

" 503. Criminal intimidation - Whoever threatens another with any injury to his person, reputation or property, or to the person or reputation of any one in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit to do any act which that person is legally entitled to do, as the means of avoiding the execution of such threat, commits criminal intimidation.

Explanation - A threat to injure the reputation of any deceased person in whom the person threatened is interested, is within this section."

- So, the allegation mentioned in the final report will not attract any of the ingredients under Section 503 IPC also.

13. The authorities failed to pacify the petitioners promising to fulfil their grievance. Without doing such a duty, it is unfortunate that the petitioners have been prosecuted for the offence mentioned in the final report.

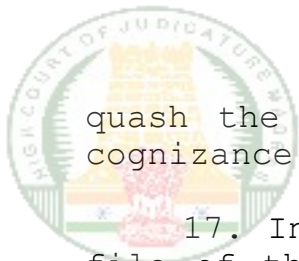
14. The next allegation is that the petitioners committed offence under Section 291 IPC. It defines 'continuance of nuisance after injunction to discontinue' in the following words:-

"291.continuance of nuisance after injunction to discontinue - Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both. "

- So, the allegation mentioned in the final report will not attract any of the ingredients under Section 291 IPC.

15. A reading of the averments made in the final report also will not attract any of the ingredients mentioned in this petition. As mentioned earlier, there is no material on record to show that they assembled in the place of occurrence with an intention to create nuisance.

16. So, I am of the considered view that it is a fit case to



quash the proceedings initiated by the first respondent and taken cognizance by the learned Judicial Magistrate No.IV, Madurai.

17. In view of the above, proceedings in C.C.No.837/2020 on the file of the learned Judicial Magistrate No.IV, Madurai, is quashed and the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS I)

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/ /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 responsibility of the advocate/litigant concerned.

To

1. The Judicial Magistrate No.IV,  
Madurai,
- 2.The The Inspector of Police,  
South Gate Police Station,  
Madurai District.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

Crl.O.P. (MD)No.7822 of 2021  
and

Crl.MP (MD)No.3996 of 2021  
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