



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.07.2021

Pronounced on : 10.08.2021

CORAM :

THE HONOURABLE **Mr. JUSTICE G.ILANGO VAN**

Crl.O.P. (MD)No.6193 of 2021

and

Crl.M.P. (MD)Nos.3554 and 3556 of 2021

1.R.M.T.C.Mariappan @ Mariappan
2.P.Muruganandham
3.Magudeshwaran
4.Vilasam Selvam @ Mariyathaselvam ... Petitioners

Vs.

1.State rep. by
The Inspector of Police,
Palani Adivaram Police Station,
Dindigul District.
(Crime No.173 of 2016)

2.Syed Ibrahim ... Respondents

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in respect of S.T.C.No.2496 of 2016 on the file of the learned Judicial Magistrate, Palani and quash the same.

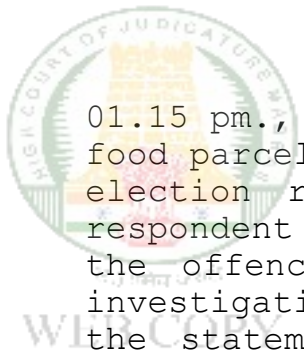
For Petitioners : Mr.D.Venkatesh

For R1 : Mr.R.M.Anbunithi,
Addl. Public Prosecutor (Crl. Side)

ORDER

This petition is filed to quash the proceedings in S.T.C.No.2496 of 2016 on the file of the learned Judicial Magistrate, Palani.

2.The case of the prosecution is that on 13.04.2016 at about 11.00 a.m., election meeting was conducted at Angalaparameswari Marriage Hall, Arul Jothi Street, Palani by AIADMK political functionaries and nearly 5000 people gathered and participated in the meeting. After the main functionaries left the meeting at about



01.15 pm., the accused started to distribute drinking water bottles, food parcel and money to the gatherings. Thereby, they violated the election rules. Based upon the complaint given by the second respondent herein, a case in Crime No.173 of 2016 was registered for the offences under Section 143, 188 and 171(E) of I.P.C. The investigation was undertaken and the materials were collected and the statement of witnesses have been recorded and finally final report has been presented before the concerned Court after completing the investigation on 18.10.2016. It was taken on file in S.T.C.No.2496 of 2016 by the learned Judicial Magistrate, Palani. Challenging the final report and cognizance, the petition is filed by all the accused.

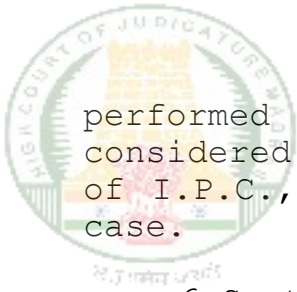
3.Heard both sides.

4.It is seen that during 2016, the election was around the corner. So an election consultation meeting alleged to have been arranged on 13.04.2016 at about 11.00 a.m., in which the then Ho'ble Minister namely., Mr.R.Visunathan and then Hon'ble Member of Parliament namely., Mr.Udayakumar were the contestants in the election. About 5000 people gathered in the meeting and after the departure of main leaders, these petitioners distribute drinking water bottles and food parcel to the gatherings. This is the main allegation that has been levelled against these petitioners. For attracting the offence under Section 143 of I.P.C., it must be shown that the meeting was conducted without prior permission from the police department. A reading of the final report shows that prior permission was obtained from the concerned officials for the purpose of conducting meeting. Section 143 of Cr.P.C., reads as under:-

"143. Magistrate may prohibit repetition or continuance of public nuisance

A District Magistrate or Sub-divisional Magistrate, or any other Executive Magistrate empowered by the State Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code (45 of 1860), or any special or local law"

5.A reading of this provision shows that a specific direction might have been issued either by the District Magistrate or Sub Divisional Magistrate or any other Executive Magistrate directing a person not to repeat or continue a public nuisance. There is no averment to the effect that by conducting an election meeting, these petitioners indulged in creating nuisance in a public place. No where, it has been stated that because of the meeting, public peace was affected and created nuisance. So convening and conducting a meeting on the eve of election is the democratic right of every political party. It is a freedom of assembly, which is well recognized in the Constitution of India. These petitioners



performed their political and democratic rights and that cannot be considered as public nuisance. Hence, the offence under Section 143 of I.P.C., will not attract to the facts and circumstances of the case.

6. Section 188 is non-cognizable offence in nature. This Court in the judgment reported in **2018 2 LW (crl) 606 [Jeevanandham and other Vs. Inspector of Police, Sivakasi Town Police Station, Virudhunagar District]**, dated 20.09.2018, has specifically objected that in such cases, police is not empowered to register a case under Section 188 of I.P.C. More over, a reading of Section 188 of I.P.C., will also show that the ingredients of the offence are not attracted to the facts and circumstances of the case. Similarly, Section 171(E) of I.P.C., is also non-cognizable offence. Both the offences cannot be investigated by the police without the permission of the concerned jurisdictional Magistrate.

7. The learned counsel for the petitioners would rely on the judgment of the Hon'ble Karnataka High Court in **Andaneppa and Others Vs. State of Karnataka and Another in Criminal Petition No.101648 of 2017**. Wherein it has been observed that the cognizance of such offences is barred under Section 155(2) of Cr.P.C. The police is not empowered to investigate the matter and file final report. It is a mandatory provision and non-compliance of same will vitiate the entire proceedings.

8. The offence is being non-cognizable in nature, the police has no right to register a case and file the final report. The cognizance taken by the learned Judicial Magistrate, Palani under Sections 188 and 171(E) of I.P.C., is not valid under law.

9. Even if we consider that in the meeting drinking water bottles and food parcel have been distributed that cannot be taken as a bribe, as only the party members were present as defined under Section 171 of I.P.C., It can be considered only a courtesy which have been shown at the minimum to the gatherings. More over, it is also seen that no money alleged to have been disbursed to the gatherings has been seized or recovered from the beneficiaries during the course of investigation. In the absence of any such recovery or seizure of money, the offence under Section 171(e) is not also attracted.

10. Even if we consider that Section 143 of I.P.C., is cognizable offence, which has been registered along with non-cognizable offences, by which, the police is not empowered to register a case and investigate the matter and file the final report, but as I mentioned earlier, it is not an unlawful assembly.

11. In the result, this Criminal Original Petition is allowed and the proceedings in S.T.C.No.2496 of 2016 on the file of the



learned Judicial Magistrate, Palani is quashed. Consequently, connected miscellaneous petitions are closed.

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.

To

- 1.The Judicial Magistrate,
Palani.
- 2.The Inspector of Police,
Palani Adivaram Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.6193 of 2021
10.08.2021

RK (23.08.2021) 4P 4C