



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.07.2021

CORAM :

WEB COPY

THE HONOURABLE **Mr. JUSTICE G.ILANGOVA**

Crl.O.P. (MD)No.8759 of 2021
and Crl.M.P(MD)Nos.4491 and 4492 of 2021

- 1.Sachithanantham
- 2.Thayalan
- 3.Saiyed Atham sead
- 4.Sakkarai Gounder
- 5.Balachandran
- 6.Gurusamy
- 7.Rathnavel
- 8.Palanisamy
- 9.Kalidass
- 10.Vartharaj
- 11.Lakshmanan
- 12.Palanisamy
- 13.Alagarsamy
- 14.Veeravel
- 15.Vetrivel
- 16.Lakshmanan
- 17.Arumugam
- 18.Kathireasan
- 19.Karuppan

... Petitioners 1 to 19/Accused 1 to 19
Vs.

1.The State rep by
Rep. by Inspector of Police,
Reddiyarchatram Police Station,
Dindigul District
(Crime No.58 of 2017) ... 1st Respondent/Complainant

2.Muthukumar ... 2nd Respondent/Defacto Complainant

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in connection with the impugned charge sheet in S.T.C.No.70 of 2018 pending on the file of the learned Judicial Magistrate Court, Oddanchatram, Dindigul District and quash the same in so far as the petitioners are concerned.

For Petitioners : Mr.S.Sarvagan Prabhu
For R1 : Mr.R.M.Anbunithi,
Additional Public Prosecutor



ORDER

This petition is filed seeking a direction to quash the charge sheet in S.T.C.No.70 of 2018 pending on the file of the learned Judicial Magistrate Court, Oddanchatram, Dindigul District.

2. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor appearing for the first respondent police.

3. The case of the petitioners is that on 25.04.2017 at about 11.00 a.m the petitioners and others were found making 'Dharna' without proper prior permission demanding waiver of agricultural loan in K.Puthupatti in Dindigul Palani Road and also caused disturbance to the traffic. Based upon the complaint given by the defacto complainant, namely, the Sub Inspector of Police, attached to the respondent police, a case in Crime No.58 of 2017 for the offences under Section 341, 143, 188 IPC has been registered. Based upon the First Information Report, investigation has been undertaken and final report has been filed before the Judicial Magistrate, Oddanchatram, Dindigul District and the same has been taken on file in STC No.70 of 2018.

4. Challenging the final report this petition is filed mainly on the ground that Section 188 IPC is non-cognizable offence and the police has no right to file a final report.

5. The learned counsel for the petitioners has relied upon the judgment reported in **2018(2) L.W (Crl.)606 (In Jeevanandhan and others Vs. State rep. by Inspector of Police, Velayuthampalayam Police Station, Karur District and another)** wherein a elaborate discussion has been made regarding the powers of police under Section 188 IPC. In view of the settled preposition of law, cognizance taken by the Judicial Magistrate is without jurisdiction.

6. The next offence alleged is Section 341 IPC for the purpose of taking cognizance under this offence, there must be sufficient material to show that the petitioners indulged in restraining either public or the traffic from proceedings in any particular direction. In this case, no such allegation is not attributed by the petitioners.

7. So far as Section 143 IPC is concerned, for the purpose of taking cognizance under Section 143 IPC, the ingredients under Section 141 IPC must be brought on record. Section 141 IPC reads as follows:



141. 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, 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.

From the reading of Section 141 IPC, the ingredients of offence are not attracted to the present occurrence. It appears that the petitioners and others gathered for making protest demanding waiver of agricultural loan. There is no material on record or material collected during the investigation to the effect that the protest turned to violence at the end or during the course of protest. It appears that nationwide Bandh was called for by the Farmers Union demanding waiver of agricultural loan. Hence, it should not be considered an unlawful assembly gathered illegally. As observed in Jeevanandham's case, the respondent police would have detained the petitioners under Section 41 CR.P.C and would have released them after that. Without doing that, registration of case and filing of final report may not be considered to be proper since the right of protest has been recognized and that too conducting the protest without any violence cannot be considered to be per se illegal.

8. In view of the foregoing reasons, the charge sheet in S.T.C.No.70 of 2018 pending on the file of the learned Judicial Magistrate Court, Oddanchatram, Dindigul District, is liable to be quashed. Accordingly, the same is quashed.



9. In fine, this petition is allowed. Consequently, connected miscellaneous petitions are closed.

WEB COPY

Sd/-

Assistant Registrar (CS II)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

CM

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,
Oddanchatram,
Dindigul District
2. The Inspector of Police,
Reddiyarchatram Police Station,
Dindigul District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.SARVAGAN PRABHU, Advocate (SR-21308[F] dated
06/07/2021)

Crl.O.P. (MD)No.8759 of 2021
and Crl.M.P (MD)Nos.4491 and 4492 of 2021
05.07.2021

RC (13.07.2021) 4P 5C