



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 16.11.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

WEB COPY

Crl.O.P.(MD)No.497 of 2019

and

Crl.MP(MD)Nos.241 and 242 of 2019

1.Senthilvel
2.Mary Selvam
3.Ayyanar
4.Selvam
5.Kalidoss

: Petitioners/A3 to A6 and A8

Vs.

1.The Inspector of Police,
Town Police Station,
Srivilliputhur,
Virudhunagar District.
(FIR No.225/2014)

: 1st Respondent/Complainant

2.Chandra Prakash

: 2nd Respondent/Informant

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to STC No.1056 of 2014 on the file of the Judicial Magistrate Court No.II, Srivilliputhur, Virudhu Nagar District and quash the same as illegal.

For Petitioners : Mr.R.Murugappan

For 1st Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

For 2nd Respondent : Died

O R D E R

This petition is filed seeking quashment of the case in STC No.1056 of 2014 pending on the file of the Judicial Magistrate No.II, Srivilliputhur @ Virudhu Nagar District.

2.The case of the prosecution in brief:-

The de-fcto complainant, who was working as Tashildar, Srivilliputhur, on 20.04.2014 lodged a complaint with the first respondent police with the following allegations:-



On the eve of Parliamentary Election, he was working in the squad in the routine inspection and at that time, near Madavar Campus Bus Stop, election campaign has been held by the accused persons along with others and about to start a procession along with the alliance party. So the de-facto complainant informed that the petitioners had not obtained any prior permission from the Election Commission for procession. That was not considered and this was objected by him. So they started gathering in that place for taking out the procession. On the basis of the complaint given by the 2nd respondent, a case in Crime No.225 of 2014 was registered for the offence punishable under sections 143, 341 IPC and section 123(7) of the Representation of People Act, 1951. So it has also taken cognizance in STC No.1056 of 2014 on the file of the Judicial Magistrate Court No.II, Srivilliputhur.

3.Challenging the same, this petition came to be filed on the main ground that none of the allegations mentioned in the final report attract any of the ingredients of the offences against the petitioners.

4.Heard both sides.

5.It is a matter of election issue that took place on 20.04.2014. According to the prosecution, these petitioners along with others, started gathering in the place of occurrence, for taking out the procession and for that purpose, they did not obtain any prior permission from the election authorities.

6.No doubt, reading of the FIR and the statement of witnesses shows that they gathered in the place of occurrence with an intention to make a procession of two wheeler. The statement of the 2nd respondent also shows that his further enquiry reveals that some of the persons gathered in that place for listening to the election speech that was made by one Thirumal Kumar and those persons have also been wrongly included in his complaint. So, who actually involved in the above said gathering is not clear on record.

7.It is further seen that without verifying proper facts and the vehicles that have been found in the place of occurrence with the party flags, has been seized. So mere gathering in the place of occurrence may not attract section 123 (7) of the Representation of People Act, 1951. As per the statement given by the 2nd respondent official, it is seen that the procession did not start and when they are about to start the procession, that has been prevented by the authorities.

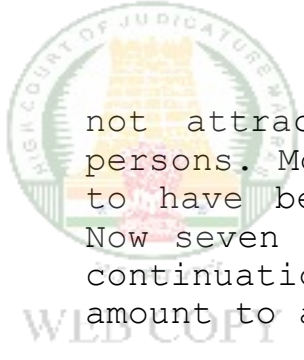
<https://hcservices.equib.gov.in/hcservices> 8.Section 123(7) of The Representation of the People Act, 1951 reads as follows:-



"(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person 11[with the consent of a candidate or his election agent], any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely:—

- (a) gazetted officers;
- (b) stipendiary judges and magistrates;
- (c) members of the armed forces of the Union;
- (d) members of the police forces;
- (e) excise officers; 13[(f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and]
- (g) such other class of persons in the service of the Government as may be prescribed: 14[Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election.] 15[(8) Booth capturing by a candidate or his agent or other person.] Explanation.—(1) In this section the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate."

9. So reading of the above provision shows that the ingredients are not attracted against the occurrence. So mere assembling of persons for taking out procession will not attract the ingredients of section 123(7) of the Representation of People Act 1951, which has been classified as a bribe group. If at all only section 188 IPC can be attracted even though registering the case under section 188 IPC, it is non cognizance offence as per the judgment of **Jeevanantham's** case. So permission ought to have obtained from the competent Judicial Magistrate to register the case and investigate the matter. So the offence under section 188 IPC is



not attracted and it cannot be proceeded against the accused persons. More over, the occurrence is of the year 2014, which said to have been taken place on the eve of Parliamentary Election. Now seven years lapsed, nothing moved before the trial court. So continuation of the proceedings against the petitioners will amount to abuse of process of law and court.

10. In view of the above, this criminal original petition stands **allowed**. The case in STC No.1056 of 2014 pending on the file of the Judicial Magistrate No.II, Srivilliputhur, is hereby quashed as against the petitioners. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)

er

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.II,
Srivilliputhur at Virudhu Nagar District.
2. The Inspector of Police,
Town Police Station,
Srivilliputhur,
Virudhunagar District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Cr1.OP(MD)No.497 of 2019
16.11.2021