



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.07.2021

CORAM:

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

Crl.O.P. (MD)No.8711 of 2021

and Crl.M.P. (MD) No.4462 of 2021

1. Eswaran
 2. Rupavathi
 3. Shanthi
 4. Devika
 5. Chandra ... Petitioners/Accused Nos.4,10,11,14,15
- Vs.

1. State Rep. by
The Inspector of Police,
City South Police Station,
Dindigul.
(Crime No.242 of 2017) ...1st Respondent/Complainant

2. Senthil Prabu ...2nd Respondent/Defacto Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the case in S.T.C.No.74 of 2018 on the file of the learned Judicial Magistrate No.III, Dindigul in Crime No.242 of 2017 on the file of the respondent Police and quash the same as illegal insofar as the petitioners are concerned.

For Petitioners : Mr.B.Arun
For R-1 : Mr.R.M.Anbunidhi
Additional Public Prosecutor

O R D E R

This petition has been filed to call for the records pertaining to the case in S.T.C.No.74 of 2018 on the file of the learned Judicial Magistrate No.III, Dindigul in Crime No.242 of 2017 on the file of the respondent Police and quash the same as illegal insofar as the petitioners are concerned.

2. The case of the prosecution is that on 04.07.2017, the petitioners and others conducted a rally with empty pots by demanding and protesting against the non-supply of drinking water to their locality on Madurai-Dindigul Main Road. On the basis of



the complaint given by the Village Administrative Officer in Adivanuthu Village, a case in Crime No.242 of 2017, for the offences under Sections 341, 143 and 188 of IPC was registered and investigation was taken up and materials were also collected. After completing the investigation, the final report was also filed and it was taken on file as S.T.C.No.74 of 2018. Challenging the final report, this petition has been filed seeking quashment of the same.

3. The learned counsel appearing for the petitioners submitted that the protest was made for demanding basic amenities, i.e. supply of drinking water, which is protected under the Constitution of India and there is no allegation on the side of the prosecution that the protest made by the petitioners turned violence at that time. So, according to him, none of the allegations mentioned in the final report attract any of the offence mentioned in it against the petitioners.

4. There are three offences alleged as against the petitioners. One of the offences alleged against the petitioners is Section 188 of IPC. In a Judgment of this Court, reported in **2018 2 LW (Cr1.) 606 [Jeevanandham and others vs. Inspector of Police, Sivakasi Town Police Station, virudhunagar District]**, it has been held that the offence under Section 188 IPC is not a cognizable offence, in respect of which, the Police cannot register FIR and conduct investigation, without the permission of the concerned Jurisdictional Magistrate. Here, there is no record to show that permission has been obtained from the concerned Jurisdictional Magistrate. Therefore, the offence under Section 188 of IPC cannot be proceeded against the petitioners.

5. The next offence alleged against the petitioners is Section 341 of IPC. There is no allegation to the effect that the petitioners indulged in preventing the movement of Public at the traffic in that area. What they did was only the peaceful protest demanding supply of water to their area.

6. The next offence alleged against the petitioners is Section 143 of IPC. To attract the offence under Section 143 of IPC, the ingredients of Section 141 IPC must be established, which is extracted hereunder:

" 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."

7. A reading of the final report shows that the petitioners had no intention to do illegal activities at the time of protest. So, the assembly of persons for the purpose of demanding basic amenities would not amount any illegal act. So, none of the allegations are mentioned in the final report to attract the ingredients under Section 141 IPC.

8. Since none of the allegations mentioned in the final report attract any offence as alleged against the petitioners, the final report in S.T.C.No.74 of 2018 on the file of the learned Judicial Magistrate No.III, Dindigula, is liable to be quashed and the same is hereby quashed.

9. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

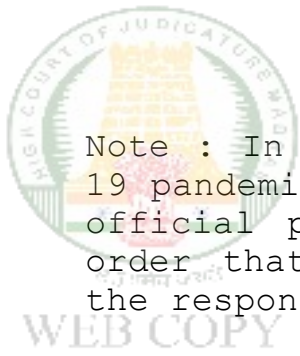
Assistant Registrar (CS-III)

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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 learned Judicial Magistrate No.III,
Dindigul.
2. The Inspector of Police,
City South Police Station,
Dindigul.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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