



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 02.08.2021

Pronounced on : 16.09.2021

CORAM:

THE HONOURABLE MR JUSTICE G.ILANGOVA

Crl.O.P.(MD) No.8429 of 2021

and Crl.M.P(MD) Nos.4330 and 4331 of 2021

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- 1.Balasubramaniyan
- 2.Chellam (a) Chellasamy
- 3.Ballakondusamy
- 4.Perumal
- 5.Krishnamoorthy
- 6.Saravanan
- 7.Ramar
- 8.Balammal
- 9.Prema
- 10.Erudhayammal
- 11.Thavamani
- 12.Modcham
- 13.Annapoorani
- 14.Muthu Karuppi
- 15.Vasantha
- 16.Anthoni Christy
- 17.Saroja
- 18.Tamil Selvi
- 19.Vimala
- 20.Vasuki
- 21.Veeramani
- 22.Vellaiyammal
- 23.Chellammal
- 24.Nagarathinam
- 25.Kala
- 26.Sarojini

... Petitioners/Accused 1 to 26

Vs.

1.State rep. by
Sub Inspector of Police,
Sivakasi East Police Station,
Virudhunagar District
(In Crime No.1062 of 2020)

... 1st Respondent/Complainant

2. Sivarama Krishnan

... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Peititon is filed under Section 482 of Cr.P.C to call for the records in the case in STC NO.47 of 2021 on the file of the Judicial Magistrate Court No.II, Sivakasi and quash the same as illegal.

For Petitioner

: Mr.M.Jothi Basu

For R1

: Mr.R.M.Anbunithi

Additional Public Prosecutor



ORDER

This petition is filed seeking quashment of charge sheet in STC NO.47 of 2021 on the file of the Judicial Magistrate Court No.II, Sivakasi

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2. The case of the prosecution is that on 26.11.2020 at about 10.45 a.m the accused conducted demonstration under the leadership of the first accused protesting against the prohibition of lighting of crackers in northern part of India. The demonstration has been conducted while Covid-19 protocol was in force. On the basis of the complaint given by the Sub Inspector of Police, a case in Crime No.1062 of 2020 has been registered on the file of the first respondent herein. After filing of the First Information Report, investigation was conducted and materials were collected and statement of witnesses have been recorded. Finally final report was filed which was taken on file as STC NO.47 of 2021 by the learned Judicial Magistrate No.2, Sivakasi. Seeking quashment of the same, this petition is filed solely on the ground that the offences under Sections 143, 269, 270 IPC and Section 3 of Epidemic Diseases Act, 1897 of r/w Section 134 of Tamilnadu Public health Act, 1939 Act are not attracted in the facts and circumstances of the case.

3. The matter was originally heard and reserved for judgment.

4. On going through the entire records this Court entertained a doubt with regard to the reason behind the protest and demonstration that have been made by the petitioner.

5. The learned counsel for the petitioner would submit that in Northern India prohibition was imposed to light crackers during the festival season stating that it caused air pollution, since the petitioners were engaged in manufacturing of cracker units and because of the prohibition imposed in northern India their livelihood was affected and their grievance was expressed by way of this demonstration. He would further submit that there was no law, rule or Government Order imposing such restrictions. So what have been demonstrated by them was only expressing their grievance about the prohibition and the consequential loss of livelihood. According to him, this cannot be construed as a unlawful demonstration and no untoward or violent incident also followed because of the demonstration. With these arguments in the background let us go to the averments made in the final report.

6. Bald averments are made in the final report to the effect that on 26.11.2020 at about 10.454 a.m at Sivakasi - Sathur main road, the accused persons about 26 assembled unlawfully against Covid-19 protocol and made demonstration on condemning the prohibition that has been imposed on the northern India for lighting



of fire crackers. No doubt during the relevant period Covid-19 protocol was imposed by the Government. But the grievance is that because of the above said unlawful prohibition, their livelihood was affected. So they had constitutional right of expressing their grievance. So it cannot be considered as an unlawful assembly.+

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7. Section 141 IPC defines unlawful assembly as under:

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

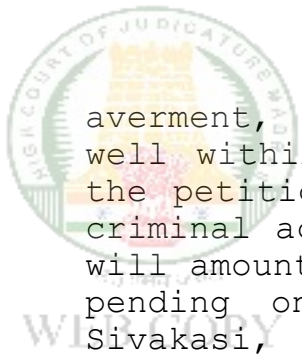
Second – To resist the execution of any law, or of any legal process; or

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.

8. In the light of the above definition when we look into the final report, we can easily say that it cannot be termed as unlawful assembly. Similarly for attracting offences under Sections 269 and 270 IPC also, there are no materials to show that the petitioners were also affected by Covid-19 virus and because of their assembly virus spread to others. Since in the absence of any such materials on record, the offence under Sections 269 and 270 IPC and Section 3 of Epidemic Diseases Act, 1897 r/w Section 134 of Tamil Nadu Public Health Act, 1939 Act are also not attracted.

9. No doubt that the petitioners have known about the prohibition that has been imposed by the Government. Since their livelihood have been lost, they have made demonstration. Therefore, the authorities ought to have warned the petitioners to disperse and go home and in spite of doing that, it appears that they have registered a case and even in the final report it has also been stated to the effect that they have advised or warned to disperse from the place of occurrence and in spite of that warning and advice they continued to protest. Since in the absence of any such



averment, I am of the considered view that the petitioners were well within the right,. No purpose would be served in prosecuting the petitioners for the above said offences. Since no violation or criminal act ensued I find continuation in the criminal prosecution will amount to abuse of process of law and court. So the proceedings pending on the file of the learned Judicial Magistrate No.2, Sivakasi, in STC NO.47 of 2021 is liable to be quashed. Accordingly, the same is quashed.

10. In the result, this petition is allowed.

Sd/-

Assistant Registrar (P&A)

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Sub Assistant Registrar(CS)

CM

To

- 1.Sub Inspector of Police,
Sivakasi East Police Station,
Virudhunagar District
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
- 3.The Judicial Magistrate No.2,
Sivakasi.

+1 CC to M/s.G.M.LAW OFFICE(M.Jothi Basu), Advocate(SR-29494[F]
dated 17/09/2021)

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MGJ(27.09.2021) 4P 5C