



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED : 13.07.2021

ORDER PRONOUNCED : 18.08.2021

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGOVAN**
Crl.O.P. (MD)No.8287 of 2021
and
Crl.M.P (MD)Nos.4254 and 4255 of 2021

1.Murali

2.Alagar

3.Thirumoorthy

4.Ilakiyaselvan

... Petitioners

Vs.

1.State represented by its
The Inspector of Police,
Town Police Station,
Srivilliputhur,
Virudhunagar District.
(Crime No.225 of 2014)

2.Chandra Prakash

...Respondents

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.1056 of 2014 on the file of the learned Judicial Magistrate No.II, Srivilliputhur and quash the same.

For Petitioners : Mr.S.Ramasamy

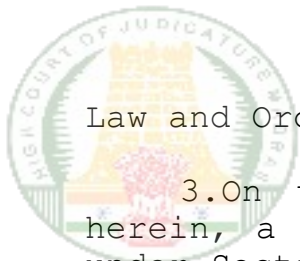
For R1 : Mr.R.M.Anbunithi

Additional Public Prosecutor (Crl.Side)

ORDER

This petition is filed seeking quashment of the case in S.T.C.No.1056 of 2014 on the file of the learned Judicial Magistrate No.II, Srivilliputhur.

2.The case of the prosecution as narrated in the final report is that on 20.01.2014 at about 06.00 pm., the accused persons without getting any proper permission from the police conducted the Bicycle Rally by putting their political flag, namely, Marumalarchi
Davaida Munnetra Kalagam and blocked the public road, by creating



Law and Order problem.

3. On the basis of the complaint given by the 2nd respondent herein, a case in Crime No.225 of 2014 for the offences punishable under Sections 123(7) Representation of People Act, 1951 r/w Section 188 of IPC @ 143, 341, 123 (7) of Representation of People Act, 1951 r/w Section 188 of IPC has been registered against the accused persons and the final report has also been presented before the learned Judicial Magistrate No.II, Srivilliputhur, which is also taken on file in S.T.C.No.1056 of 2014. Challenging the final report, seeking quashment of the same, this petition is filed mainly on the ground that none of the allegations as mentioned in the final report attract any of the ingredients of the offences against these petitioners. So, according to them, Section 188 of IPC is a non punishable offence, for which, the police has no right to register the case and file the final report. The learned counsel for the petitioners would straight away rely upon 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).**

4. Heard both sides.

5. It appears that the petitioners belong to a political party and during the parliament election period in 2014, they conducted the Bicycle Rally without getting proper permission from the police authorities. So, based upon that, the case has been registered for the offences punishable under Sections 123(7) Representation of People Act, 1951 r/w Section 188 of IPC @ 143, 341, 123 (7) of Representation of People Act, 1951 r/w Section 188 of IPC. No doubt, the petitioners have not obtained any permission from the police authority for conducting the Bicycle Rally. During that relevant time, the election protocol and conduct rules were also in force. But, it appears that it is not an unlawful assembly as defined under Section 141 of IPC. Section 141 of 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."

6. So, the offence under Section 143 of IPC may not be attracted against these petitioners. It is not a case of the prosecution that because of the Bicycle Rally, any violent activity took place. It appears that it was peaceful Bicycle Rally supporting their political leader. Insofar as Section 341 of IPC is concerned, no material has been collected to show that these petitioners unlawfully prevented any person from proceeding in any direction.

7. Section 341 of IPC reads as follows:-

"341. Punishment for wrongful restraint:- Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both."

8. Section 339 of IPC reads as follows:-

"339. Wrongful restraint:- Whoever voluntarily obstructs any person so as to prevent that person from proceeding in any direction in which that person has a right to proceed, is said wrongfully to restrain that person."

9. In the light of the aforesaid definitions and the 161 statement recorded during the course of investigation, no allegation of wrongful restraint has been made. The statement shows that only some of the persons for the purpose of conducting the public meeting came in the vehicle and also indulged in campaigning against the code of conduct. It appears that no wrongful restraint has been made to any public. The next offence is Section 123(7) of Representation of People Act, 1951.

10. Section 123 (5) of Representation of People Act, 1951 reads as follows:-

"123 (5):- The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent or the use of such vehicle or vessel for the free conveyance of any elector other than the candidate himself, the members of his family or his



agent to or from any polling station provided under Section 25 or place fixed under sub-section (1) of Section 29 for the poll:

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practise under this clause:"

11. Reading of these provisions along with the statement of the witnesses recorded during the course of investigation shows that there is no specific allegation to the effect that these petitioners hired the vehicles for the purpose of promoting their candidature of their party leader. The offence is of the year 2014 and now we are in 2021. For the past 7 years, it appears that a criminal case is pending. The parliament election for the year 2014 has gone and the next election for the year 2019 has also been conducted. So, in such of the events, nothing is going to be served in keeping the matter pending. So, I am of the considered view that the case in S.T.C.No.1056 of 2014 on the file of the learned Judicial Magistrate No.II, Srivilliputhur deserves to be quashed and accordingly, it is quashed.

12. This Criminal Original Petition is allowed, accordingly. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS III)

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/ /2021

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 No.II,
Srivilliputhur,
Virudhunagar District.
- 2.The Inspector of Police,
Town Police Station,
Srivilliputhur,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

**Crl.O.P. (MD)No.8287 of 2021
18.08.2021**

MGJ(26.08.2021) 5P 4C