



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 06.07.2021

CORAM :

THE HONOURABLE **Mr. JUSTICE G.ILANGOVAN**

Crl.O.P. (MD)No.8803 of 2021
and Crl.M.P(MD)Nos.4526 and 4527 of 2021

1.Gowtham @ Gowthaman
2.Gowtham @ Gowtham
3.Praveen
4.Babu

... Petitioners 1 to 4/Accused 1,3,6 & 7

Vs.

1.The State rep by
Rep. by Inspector of Police,
Town North Police Station,
Dindigul Town,
Dindigul District.
(Crime No.522 of 2016)

... 1st Respondent/Complainant

2.M.Gnanasekaran

... 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 C.C.No.519 of 2016 pending on the file of the learned Judicial Magistrate Court No.2, Dindigul, Dindigul District and quash the same in so far as the petitioners are concerned.

For Petitioners

: Mr.Sarvagan Prabhu

For R1

: Mr.R.M.Anbunithi,

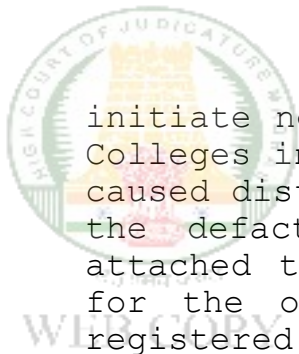
Additional Public Prosecutor

ORDER

This petition is filed seeking a direction to quash the charge sheet in C.C.No.519 of 2016 pending on the file of the learned Judicial Magistrate Court No.2, Dindigul, Dindigul District

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

3. The petitioners are arrayed as the accused 1, 3, 6 and 7. The case of the petitioners is that on 14.04.2016 at about 12.00 a.m the petitioners and others belonging to 'Abdul Kalam Latchiya India Party' conducted agitation without proper prior permission to



initiate necessary action against 30 bogus Nursing and Para Medical Colleges in Dindigul Bus Stand near Silavathur blocked 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.522 of 2016 for the offences under Sections 143, 145 and 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 No.2, Dindigul, Dindigul District and the same has been taken on file in C.C.No.519 of 2016.

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 No.2, Dindigul District under Section 188 IPC is without jurisdiction.

6. 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 s 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.

WEB COPY

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 conducted agitation to initiate necessary action against 30 bogus Nursing and Para Medical College which spoiled the life of the students. There is no material on record or material collected during the investigation to the effect that the agitation turned to violence at the end or during the course of it.

7. In Section 145 the word 'unlawful assembly' is mentioned. The petitioners and others conducted agitation with an intention to protect the future life of the students. Hence, it should not be considered as unlawful assembly. 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 agitation has been recognized and that too conducting the agitation without any violence cannot be considered to be *per se* illegal.

8. In view of the foregoing reasons, the charge sheet in C.C.No.519 of 2016 pending on the file of the learned Judicial Magistrate Court No.2, Dindigul, Dindigul District, is liable to be quashed. Accordingly, the same is quashed in entirety.

9. In fine, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-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.

<https://hcservices.ecourts.gov.in/hcservices/>



To

1. The Judicial Magistrate Court No.2,
Dindigul,
Dindigul District.

2. The Inspector of Police,
Town North Police Station,
Dindigul Town,
Dindigul District.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.8803 of 2021
and Crl.M.P (MD)Nos.4526 and 4527 of 2021
06.07.2021

LS (CO)

RK (13.07.2021) 4P 4C