



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 30.09.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

WEB COPY

Cr1.O.P.(MD)Nos.12374, 12390 and 12396 of 2020

Ariharan Kencian : Petitioner in all cases
Vs.

The State rep. by its
Inspector of Police,
Kudankulam Police Station,
Tirunelveli District-627 104. : Respondent in all cases

Prayer: Criminal Original Petitions filed under Section 482 of the Criminal Procedure Code, to call for the entire records pertaining to the case in in PRC Nos.29, 31 and of 2020 and 49 of 2014 pending on the file of the Judicial Magistrate, Radhapuram and quash the same.

For Petitioner : Mr.G.Rajagopal
(in all cases) for M/s.L.P.Maurya

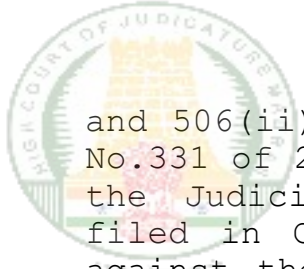
For Respondent : Mr.R.Meenakshi Sundaram
(in all cases) Additional Public Prosecutor

COMMON ORDER

The petitioner has been figured as one of the accused in all these cases. All the cases were registered in connection with Koodankulam agitation.

2.The allegation against the petitioner is that as a participant of the agitation against the Kodankulam Establishment of Atomic Power Plant, on 08.09.2012 the petitioner assembled unlawfully and constituted a unlawful assembly number about 5000 behind the Atomic Power Plant in the seashore area and advanced towards the Power Plant with an intention to destroy the plant and continued the agitation threat. In continuation of the above said protest, on 10.09.2012 at about 11.30 am, they advanced to the prohibited area by causing damage to the barricades and plastic barrels, preventive storage sand put up by the police and pelted stones and thrown chapels etc. on the police party. Finding that despite warning, the protesters refused to disperse, the police resorted to tear gas shells. During that process, the unlawful protesters damaged the vehicle bearing registration Nos.TN-72-G-0643 and TN-72-G-0857 belongs to the Police Department by using stones and sticks.

3.So the petitioner along with other accused persons charged for the offence punishable under sections 147, 148, 294(b), 353, 188



and 506(ii) IPC and section 3 of TNPPDL Act r/w 34 of IPC in Crime No.331 of 2012 and it has been taken on file in PRC No.29 of 2020 by the Judicial Magistrate, Radhapuram. Similarly, cases have been filed in Crime Nos.334 and 349 of 2012 by the respondent police against the petitioner and other accused persons, which were taken on file in PRC Nos.31 of 2020 and 49 of 2014 by the Judicial Magistrate, Radhapuram, respectively.

4.Heard both sides.

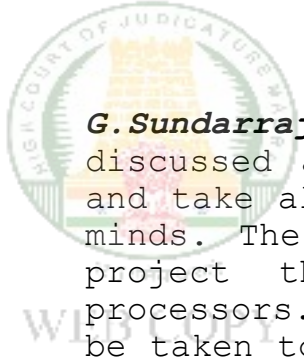
5.The learned counsel appearing for the petitioner would submit that the Coordinate Bench of this court in a batch of cases viz., Cr1.OP(MD)Nos.2064 of 2020 etc., dated 13.03.2020 has observed that on the strength of mere omnibus statement recorded under Section 161 Cr.P.C, this petitioner has also been roped in as accused. The petitioner has not rushed to the Court immediately. Continued pendency of the impugned prosecution constitutes an abuse of legal process. In this view of the matter, the impugned proceedings against the petitioner stands quashed. These Criminal Original Petitions are allowed accordingly.

6.According to the learned counsel the petitioner, the observation made by the Coordinate Bench of this court equally applies to the facts and circumstances of these cases also. According to the learned counsel for the petitioner, at the time of agitation, the petitioner is not at all involved in the occurrence and without properly verifying the identify of the persons during the course of investigation, how the police is able to figure out this petitioner among 5000 mas of people is also unbelievable and no materials have been collected during the course of investigation to identify each and every person involved in the occurrence.

7.No doubt, in the final report, it has been stated that more than 5000 people involved in the occurrence including women and child, who assembled in the seashore area for making protest. Their aim was not to cause any damage to the public property or damage to anyone, much less than the police officials. It appears that it was a peaceful demonstration at one stage. Finding that at one stage it went to uncontrollable stage of dispersing the mass, in that process, it appears that two vehicles belongs to the Police Department have been damaged.

8.No doubt that causing damage to the public property is a serious offence, which has to be properly tried. But at the time same time, the circumstance under which the above said occurrence taken place is also kept in mind.

9.As mentioned earlier, it was a fear protest made by the villagers, feeling that if any new power plant is established, their very existence will become danger. No doubt, this was a false apprehension in the minds of the villagers. That is why, the Hon'ble Supreme Court in the decision reported in the case of



G.Sundarrajan Vs. Union of India [(2013) 6 SCC 640] has elaborately discussed and requested all the Governments to educate the people and take all necessary steps to remove the misapprehension in their minds. The Hon'ble Supreme Court requested all the Governments to project the procedures that has been initiated against the processors. But even after a lapse of seven years, no procedures can be taken to withdraw the criminal prosecution. A speedy trial is a fundamental right available to the accused persons.

10. Considering the facts of this case and as observed by this court in the batch of above said criminal original petitions, it is only a general allegation made against this petitioner. Since such like this nature, continuation of the proceedings against the petitioner will amount to abuse of process of court and law.

11. In view of the above, these criminal original petitions are allowed and accordingly, the entire proceedings in PRC Nos.29, 31 and of 2020 and 49 of 2014 pending on the file of the Judicial Magistrate, Radhapuram is hereby quashed as against the petitioners.

Sd/-

Assistant Registrar (CS-II)

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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.

1. The Judicial Magistrate,
Radhapuram, Tirunelveli District.
2. The Inspector of Police,
Kudankulam Police Station,
Tirunelveli District-627 104.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.L.P.MAURYA, Advocate (SR-30833[F] dated 01/10/2021)

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