



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

Crl.O.P. (MD)No.13855 of 2021
and Crl.M.P. (MD)No.7200 of 2021

WEB COPY

G.Mathusuthanan ... Petitioner / Accused No.2

Vs.

1.The State by,
The Inspector of Police,
Samayanallur Police Station,
Madurai District.
Crime No.307 of 2020 ... 1st Respondent/Complainant

2.Udhaya Kumar,
Special Sub-Inspector of Police,
Samayanallur Police Station,
Madurai District. ... 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 First Information Report in Crime No.307 of 2020 on the file of respondent police and quash the same.

For Petitioner : Mr.K.Dinesh
For R-1 & R2 : Mr.Sanjai Gandhi
Government Advocte (Crl.side)

O R D E R

This petition has been filed seeking quashment of the case in Crime No.307 of 2020 on the file of respondent police.

2. The case of the petitioner is that on 15.04.2020, when Section 144 Cr.P.C ban was in force, the petitioner and 5 other accused persons without following the regulations of Covid-19 protocol, protested in an unlawful manner and shouted slogans against the Government to provide ration articles to the general public.

3. Hence, a case in Crime No.307 of 2020 for the offences under Sections 188, 269,270,143 IPC has been registered on the same day. The present petition is filed to quash the First Information Report in Crime No.307 of 2020.

4. This petition is filed mainly on the ground that Section 188 Cr.P.C is a non-cognizable offence and the police has no right to



register the case and investigate. Sections 269 and 270 IPC are concerned, there is no intention on the part of the petitioner to spread the disease to another and the petitioners and other accused protested for general public's welfare.

5. Heard both sides.

6. In 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**) it has been held that the police has no right to file a case under Section 188 IPC and to investigate the same without getting proper permission from the concerned jurisdictional Magistrate. Here, there is no material to show that before registering the case, permission of the concerned jurisdictional Magistrate has been obtained. In such circumstances, the respondent has no right to register the case and to investigate the matter.

7. A detailed guideline has been issued by this Court in the judgment cited supra. On this aspect, Section 188 IPC will not stand against the petitioner. The offence under Sections 269 and 270 IPC are concerned, as per the contents of the First Information Report, it is seen that the petitioner and others protested in an unlawful manner and shouted slogans during the pandemic period. It is a trivial matter in which no offence of grievous nature is involved. Even though Section 144 Cr.P.C order was in force, during the relevant time the respondent police ought to have warned the petitioner and others to go in-door, instead of that, they filed a case. It is also not the case of the respondent that at the time of the incident, the petitioner was affected by Covid-19. So the contention that conducting protest during the pandemic period will spread the disease is without any basis. Section 143 IPC is concerned, it specifies the period of punishment for a person who is a member of an unlawful assembly.

8. 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.

9. 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 petitioner and others 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 are not attracted.

10. Moreover, it is seen that the petitioner has been completed Law degree in 2021 and the petitioner is awaiting for his enrollment. During the police verification, it came to notice that the petitioner is involved in this case and therefore, enrollment of the petitioner is kept in abeyance.

11. Considering the nature of allegations and the offences involved in this case, I am of the considered view that protesting for the welfare of the public should not be a reason for spoiling the future of the petitioner. Unintended casual act should not take away the future of the petitioner. More over, it is also brought to the notice of this Court that the Government is also going to drop all these cases, which have been registered during the pandemic period against the public. Taking all these aspects into account, I am of the considered view that the First Information Report in in Crime No.307 of 2020 on the file of the first respondent is liable to be quashed and the same is quashed.

12. In fine, this petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

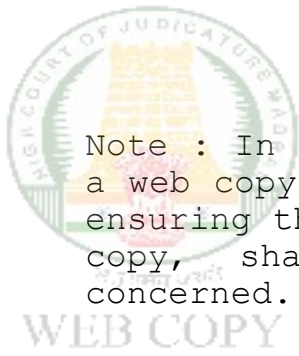
Assistant Registrar (CRL)

// 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.

To

- 1.The Inspector of Police,
Samayanallur Police Station,
Madurai District.
- 2.Special Sub Inspector of Police,
Samayanallur Police Station,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.K.DINESH, Advocate (SR-29699[F] dated 21/09/2021)

Crl.O.P. (MD)No.13855 of 2021
and Crl.M.P (MD)No.7200 of 2021
20.09.2021

_RD(4.10.2021) 4P 5C