



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.10.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P.(MD)No.13849 of 2021

and

Crl.MP(MD)Nos.7195 and 7197 of 2021

Mr.Joseph Sail Singh @ Joseph Zail Singh : Petitioner/
Accused No.42

Vs.

State rep. by
The Inspector of Police,
Kottar Police Station,
Kanyakumari District.
(In Crime No.235 of 2018)

: Respondent/
Complainant

Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, to quash the STC No.62 of 2018 on the file of the Judicial Magistrate No.II, Nagercoil, Kanyakumari District

For Petitioner : Mr.G.Anto Prince

For Respondent : Mr.K.Sanjay Gandhi

O R D E R

This petition is filed seeking to quash the proceedings in STC No.62 of 2018 on the file of the Judicial Magistrate No.II, Nagercoil.

2.The case of the prosecution in brief is that on 19.05.2018 at about 11.30 am, the accused persons, numbering about 179 blocked the Nagercoil main road in front of SLB Boys Higher Secondary making agitation against the opening of the Harbour and thereby, they also obstructed the traffic for about 15 minutes. Based upon the complaint given by the respondent herein, a case in Crime No.235 of 2018 was registered and after completing the investigation process, final report was also filed before the Judicial Magistrate No.II, Nagercoil, which was also taken on file in STC No.62 of 2018. Seeking quashment of the same, this petition has been filed by the petitioner as 42nd accused.

3.The first ground on which the learned counsel appearing for the petitioner would submit that the offence under section 188 IPC is a non-cognizable offence, for which the police has no right to register the FIR and investigate the matter. The 2nd ground is that all the offences alleged against this petitioner are punishable below one year and in this case, the final report has been filed



only after bar of limitation under section 468 of the Criminal Procedure Code.

4. Heard both sides.

5. It is not denied that this petitioner along with other group of persons, who belong to the fishermen community made a protest and agitation, staging demonstration against the decision of the Government to open the Commercial Harbor in Uchipulli area. It is seen that they apprehend danger and trouble to the fishing right if such a Harbour is established by the Government. Whether their apprehension is reasonable and correct, may not be taken into account. But however, the facts and circumstances clearly shows that they apprehended danger with regard to their livelihood, since they are depending upon the fishing rights. So, demanding and requesting the Government not to establish such a Harbour, they made a protest and blocked the traffic and sat on the road and conducted road traffic agitation. Agitation and usual protest is well recognized by way of expressing the grievance of the public and that cannot be termed as unlawful.

6. Section 141 IPC defines unlawful assembly, which 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, or any public servant in the exercise of the lawful power of such public servant; or

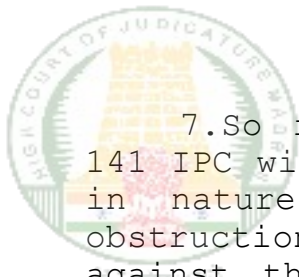
Second-To resist the execution of any law, or of any legal process; or

Third.-To commit any mischief or criminal trespass, or other offence; or

Forth.-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.

<https://hcservices.ecourts.gov.in/hcservices/> *Explanation.-An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly.*



7. So reading of the ingredients of the offence under section 141 IPC will show that their protest and agitation was not unlawful in nature. Their aim was not to make any public nuisance, obstruction to traffic etc. But their aim is to air their grievance against the opening of the Harbour. So section 143 IPC is not attracted.

8. So far as section 188 of IPC is concerned, it is now settled that it is a non-cognizance offence and the police has no right to register FIR and file a final report. But however, section 341 IPC is also connecting, the police ought to have directed the petitioner and others to disperse from the area or by exercising the power under section 41(1) of Cr.P.C they would have detained the petitioner for having obstructed the traffic. But instead of doing these things, a case has been registered. More over, in the facts and circumstances of the case, section 341 IPC is not attracted.

9. Another important aspect, that has been brought to notice of this court is that the alleged offence is dated 19.05.2018. But however, final report was filed before the concerned court only on 5th September 2021. All these three offences are punishable below one year. So the police ought to have filed the final report before the concerned court within a period of one year from the date of the offence. But it has been filed, much after the bar of limitation, for which, it appears that no petition has been filed by the respondent under section 473 of Cr.P.C seeking extension of time. In the absence of filing extension petition on the side of the respondent before the concerned court, the cognizance taken is also illegal. So on that ground also, the entire proceedings is liable to be quashed. Even though, only this petitioner approached this court seeking quashment of the proceedings, in view of the facts and circumstances of the case, this court is of the considered view that the entire proceedings may be quashed as barred by limitation.

10. Accordingly this Criminal Original Petition stands **allowed**. The proceedings in STC No.62 of 2018 pending on the file of the Judicial Magistrate No.II, Nagercoil, is hereby quashed in entirety. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /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,
Nagercoil, Kanyakumari District.

2.The Inspector of Police,
Kottar Police Station,
Kanyakumari District.

Copy to:

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

+1 CC to M/s.G.ANTO PRINCE, Advocate
(SR-32124[F] dated 21/10/2021)

**Cr1.OP(MD)No.13849 of 2021
21.10.2021**

MGJ/UV(08.11.2021) 4P 5C