



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.02.2021

CORAM:

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THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CRL.O.P. (MD)No.14159 of 2020

and

CrI.M.P. (MD)Nos.6552 & 6555 of 2020

1.V.Senthilbalaji
2.S.Jothimani
3.K.Karunanithi
4.D.Karthik
5.K.Loganayaki
6.K.Gunasekaran
7.K.Subramaniyan
8.D.Manogaran
9.V.Rameshbabu
10.S.Maheswari
11.P.Thandapani
12.S.Jeganathan
13.R.Elango
14.N.Vadivel
15.S.Premkumar
16.V.Boopathi
17.S.Nanthakumar
18.K.Boopathi
19.R.Suresh

...Petitioners/Accused No.1to19

Vs.

1.The State, rep.by
The Inspector of Police
K.Paramathi Police Station
Karur District.

...1st Respondent/Complainant

2.Ramadevi

...2nd Respondent/
Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the charge sheet in S.T.C.No.320 of 2020, pending on the file of the Judicial Magistrate No.1, Karur and quash the same.

For Petitioners : Mr.Issac Mohanlal, Senior Counsel
for Mr.K.Balasubramani

For Respondents : Ms.Krithika Kamal

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Government Advocate (Criminal Side)



ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.320 of 2020, pending on the file of the Judicial Magistrate No.1, Karur.

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2.The case of the prosecution is that on 03.01.2020, the petitioners and others were formed unlawful assembly in front of the Government Higher Secondary School, at K.Paramathi at about 10.10.a.m. and conducted agitation by raising slogan that too issue the victory certificate of the DMK candidates, who were contested and succeeded in the Rural Local Body Election by giving hindrance to the vehicle as well as the general public. Hence, a complaint was made and FIR in Crime No.2 of 2020 was also registered against the petitioners for the offences under Sections 143 and 341 of IPC. After investigation, the same was taken on file in S.T.C.No.320 of 2020 by the learned Judicial Magistrate No.1, Karur. Hence, the petitioners came forward to file this Criminal Original Petition to quash the same.

3.The learned Senior counsel appearing for the petitioners contended that the case is nothing, but result of political motive, as A1 is the Member of the Legislative Assembly and A2 is the Member of Parliament. He further submits that only the petitioners were assembled for issuance of the victory certificate of the DMK party candidates, who won Rural Local Body Election and they have no intention to commit any offence to overawe by criminal force, or show of criminal force or to commit any mischief or criminal trespass or other offence. Therefore, in the absence of any evidence to show that the accused were formed unlawful assembly, the offence under Section 143 of IPC has not been made out. Similarly, the materials collected by the prosecution in its entirety taken together does not make out an offence under Section 341 of IPC and the prosecution has recorded the statements only from the police personals. The statement did not indicate the wrongful restraint of any one. Hence, it is submitted that continuing the prosecution case is only abuse of process of law and no offence is made out and the entire prosecution is actuated with malice and therefore, the same is liable to be quashed.

4.The learned Government Advocate (Criminal Side) appearing for the first respondent submitted that the offence under Sections 143 and 341 IPC are cognizable offences and the materials collected would clearly indicate that the offences under Sections 143 and 341 of IPC have been made out and therefore, charge sheet as against the petitioners cannot be quashed. Hence, prays for dismissal of these Criminal Original Petitions. In support of her submission, the learned Government Advocate (Criminal Side) relied upon the judgment of the Apex court in ***M.Narayanadas Vs. State of Karnataka*** reported in ***(2003) 11 SCC 251***.



5.This Court has considered the rival submissions made by the learned counsel appearing on both sides and perused the materials.

6.It is well settled Law that the power of quashing of a criminal proceedings should be exercised sparingly, with circumspection and in rarest of rare cases. The court, is not justified in embarking upon an enquiry as to the reliability or genuineness of the allegations made in the FIR or the complaint on the basis of the evidence collected during investigation.

7.The Hon'ble Supreme Court in the case of **State of Haryana and others vs. Bhajan Lal and others** reported in **1992 Supp (1) SCC 335**, has held as follows:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions relating to the exercising of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide- i7 myriad kinds of cases wherein such power should be exercised:

(1) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(2) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(3) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(4) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;



(5) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(6) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

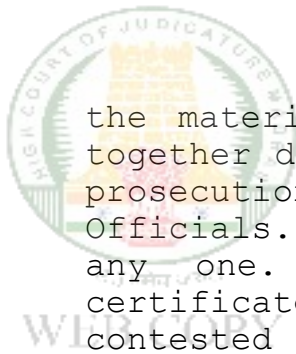
(7) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

8. Similarly, it is also well settled that while exercising the power under Section 482 Cr.P.C., the Court is not expected to express any views on merits related to the realm of appreciation of evidence to decide the credibility of the case put forward.

9. When the allegations in the FIR and the materials collected by the prosecution does not disclose the commission of any offence and make out a case against the accused and the prosecution itself is instituted with an ulterior motive for wreaking vengeance, this Court can exercise power under Section 482 Cr.P.C.

10. With regard to the offence under Section 143 IPC is concerned, this Court on perusal of the entire statement recorded by the prosecution, finds that the same would not constitute the offence and there is no material or statement from any witness to show that the accused were formed an unlawful assembly to overawe by criminal force, or show of criminal force or to commit any mischief or criminal trespass or other offence. Therefore, in view of the general statement that the accused have gathered and blocked the traffic, the offence would not be constituted. Similarly from the submission of other witness, it is seen that no particulars whatsoever is available to show that who was restrained wrongfully by such act of the accused. None of the persons, allegedly restrained by such activities of the accused, has been examined during investigation. Therefore, the materials collected by the prosecution do not disclose the commission of such offence and will not make out the case as against the accused. Therefore, lack of any evidence to prove the offence, the continuation of proceedings is nothing but abuse of process of law.

11. Insofar as the offence under Section 341 IPC is concerned,
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the materials collected by the prosecution in its entirety taken together does not make out an offence under Section 341 IPC and the prosecution has recorded the statements only from the police Officials. The statement did not indicate the wrongful restraint of any one. Further, the petitioners are claiming the victory certificate of the DMK Political party candidates, who were contested and elected. Therefore, such protest cannot be construed as unlawful assembly. It was the immediate reaction on the same day.

12.Hence, this Court is inclined to quash the proceedings in S.T.C.No.320 of 2020, on the file of the Judicial Magistrate No.1, Karur as against the petitioners herein.Accordingly, the proceedings in S.T.C.No.320 of 2020, on the file of the Judicial Magistrate No.1, Karur is hereby quashed as against the petitioners herein.

13.In the result, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

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/ /2021

Sub Assistant Registrar(CS)

VSM

To

- 1.The Judicial Magistrate No.I,
Karur.
- 2.The Inspector of Police
K.Paramathi Police Station
Karur District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Order made in
CRL.O.P. (MD)No.14159 of 2020
and CrI.MP. (MD)Nos.6552 & 6555 of 2020
23.02.2021

SSS (CO)

SRS (11/03/2021) 5P : 4C