



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 22.04.2021
DELIVERED ON : 21.05.2021
CORAM:

THE HON'BLE MR.JUSTICE G.ILANGOVAN

CrI.OP(MD)No.15899 of 2020 &
CrI.MP(MD)Nos.7820 & 7823 of 2020

S.MP.Amalan ... Petitioner/Accused No.6
Versus

1.State through its,
Inspector of Police,
Melur Police Station,
Madurai District.
Crime No.1202 of 2017 ...Respondents-1/Complainant

2.Chitra ...2nd Respondents/Defecto Complant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure to call for the entire records of the impugned proceedings of the Charge Sheet in CC.No.113 of 2018 on the file of the learned Judicial Magistrate, Melur and quash the same as against this petitioner alone as illegal.

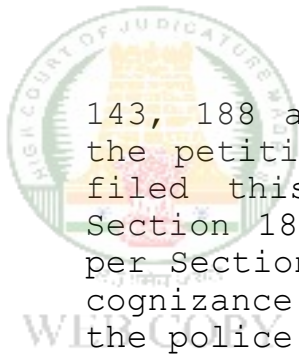
For Petitioner : Mr.R.Aravind Raj
For R1 : Mr.R.Anandharaj,
Additional Public Prosecutor

O R D E R

This petition is filed seeking quashment of CC.No.113 of 2018 on the file of the learned Judicial Magistrate, Melur.

2. The case of the second respondent / defacto complainant in the complaint is that she was working as Village Administrative Officer of Soorakundu Village, Melur Taluk, Madurai District. She made a complaint before the first respondent police on 21.11.2017, stating that the petitioner and other persons demanded release of water from Periyar Water Reservoir for irrigation, staged protest and dharna near Four Way Road and also damaged the Tin barricades put up in the place of occurrence.

3. Based upon the complaint, a case in Crime No.1202 of 2017 for the offences punishable under Sections 143, 188 and 427 of IPC was registered on 21.11.2017. Investigation was undertaken, statement of witnesses were recorded and finally final report was filed by the first respondent police against this petitioner in CC.No.113 of 2018 before the learned Judicial Magistrate, Melur. It is submitted that the petitioner and other persons have committed offences punishable under Sections



143, 188 and 427 of IPC. Seeking quashment of this final report, the petitioner, who is the 6th accused before the trial court has filed this petition, mainly on the ground that, offence under Section 188 of IPC cannot be taken cognizance by the Court and as per Section 195(1)(a) of Cr.P.C., there is a specific bar for taking cognizance of the offence under Section 188 of IPC on the basis of the police report.

4. Heard both sides.

5. The petitioner would straight away rely upon the Judgment of this Court in Jeevanantham and others vs. State, Represented by Inspector of Police, Velayuthapalayam Police Station, Karur District and another reported in 2018 2 LW (Crl) 606. In the Judgment, it is specifically stated that offence under Section 188 of IPC is a non-cognizable offence. As per Section 195(1)(a)(i) of Cr.P.C., filing of a complaint in writing by a public servant is necessary and it is not for the police to register First Information Report, investigate the case and file a final report, in a case, where the offence is under Section 188 of IPC. If at all the Police can take action as preventive measure under Section 41 of Cr.P.C., subsequent to the action, the Police has to inform the same to the concerned public servant enabling him to give a complaint in writing before the concerned Judicial Magistrate. So, except this course, no other action can be taken by the police.

6. Apart from offence under Section 188 of IPC, other offences under Sections 143 and 427 of IPC were also mentioned in the final report. For the purpose of attracting the offence under Section 143 of IPC, there must be proper material available on record to prove the unlawful assembly. Reading of the First Information Report shows that the petitioner along with others made protest demanding release of water from Periyar Water Reservoir. This cannot be construed as unlawful assembly. Section 141 of IPC is extracted below:

"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—

- 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*
- To resist the execution of any law, or of any legal process; or*
- To commit any mischief or criminal trespass, or other offence; or*



- 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
- 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."

7. Reading of the First Information Report and final report shows that none of the ingredients that are mentioned in Section 141 of IPC is attracted against this petitioner. As mentioned earlier, this was a protest for release of water. It is a demand of the particular area farmers and the same cannot be construed as an unlawful request. So, the protest will not come under the category of unlawful assembly. Hence, the offence under Section 143 of IPC will not be attracted in the present case.

8. The next offence mentioned in the final report is under Section 427 of IPC. Reading of the statement of witnesses shows that none of the witnesses have stated about the alleged damage to the barricades. No document has been produced to show that the petitioner indulged in violence and caused damage to the iron barricades put up in the place of occurrence. I find no observation mahazar also to show the alleged damage. Hence, the offence under Section 427 of IPC will also not be attracted in the present case.

9. Even though this petition has been filed by the sixth accused before the trial court, for the reasons stated above, the entire prosecution is devoid of any merits. So, the final report in CC.No.113 of 2018 on the file of the learned Judicial Magistrate, Melur in entirety is liable to be quashed and accordingly quashed. In view of the same, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed.

21.05.2021

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Sd/-

Asst.Registrar(AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



To

1. The Judicial Magistrate,
Melur, Madurai District.

2. The Inspector of Police,
Melur Police Station,
Madurai District.

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

Order in
CrI.OP(MD)No.15899 of 2020 &
CrI.MP(MD)Nos.7820 & 7823 of 2020

21.05.2021

CN(15.06.2021) 4P 4C