



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

Crl.O.P.(MD).No.15204 of 2021

and Crl.M.P.(MD).No.8148 of 2021

1.Subash Kumar

2.Kabilan

... Petitioners/Accused No.13 & 14

Vs.

1.The State rep. by

The Inspector of Police,
Thallakulam Police Station,
Madurai City,

In Crime No.455 of 2019. ... Respondent/Complainant

2.Aamuthavalli,

... 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 Crime No.455 of 2019 pending on the file of the 1st respondent police and quash the same in respect of petitioners.

For Petitioner : Mr.R.Aravind Raj

For Respondents : Mr.R.M.S.Sethuraman

Additional Public Prosecutor

O R D E R

This petition has been filed seeking quashment of FIR in Crime No.455 of 2019 pending on the file of the first respondent.

2.The case of the prosecution in brief:

On 18.03.2019, at about 11.30 a.m., the members of a political party numbering about 15 persons assembled in front of American College, Madurai, illegally and conducted demonstration and protest condemning the Pollachi Sexual abuse incident. They also demanded strict action against the accused persons and thereby caused disturbances and nuisance to the public. They also prevented the police officials from discharging their duty. Based upon the complaint given by the Sub Inspector of Police attached to Tallakulam Police Station, a case in Crime No.455 of 2019, has been registered for the offences punishable under Sections 143 and 353 IPC. Challenging the above FIR, this petition has been filed mainly on the ground that it was only a peaceful demonstration or protest and no untoward incident or unlawful activity took place. According to criminal law is a fundamental right to make such a protest condemning



the occurrence. Moreover, it is also stated that none of the allegations mentioned in the First Information Report attract any of the ingredients of the offences under Sections 143 and 353 IPC against this petitioners and others.

3. Heard both sides.

4. It is a case of political party's demonstration, protest condemning a sexual abuse occurrence that took place in Pollachi area. It appears that they also demanded arrest of all these persons concerned in the above said incident. No doubt, they have not obtained any permission from the competent authority to make a protest or demonstration in the public place. It is also appears that from the narration of the facts, no untoward incident or occurrence or violence took place, because of the above said demonstration. There is no complaint from public also as this petitioner caused nuisance to the public order. It is also not a case of police that they have prevented from discharging their official duty. Not even a single overt act has been mentioned in the FIR to the effect that the police officials, who went to the place of occurrence were prevented by the demonstrators from discharging from official duty.

5. Section 141 of IPC is 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, 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.

Explanation - An assembly which was not unlawful



when it assembled, may subsequently become an unlawful assembly."

6. When we see the facts of the case in the list of the above said definition, it is seen that the ingredients of the offences under Sections 143 IPC are not attracted against this petitioner and more particularly about the above said demonstration. So it cannot be construed as unlawful assembly. Assembly, expression of thought and protest are fundamental rights. It appears that even though the petitioner has not obtained prior permission from the competent authority, they have exercised their fundamental right only. As stated in the FIR, without prolonging the demonstration, when the police people arrived and asked them to disburse, they immediately obliged and disbursed. So it appears that it is not an unlawful assembly and there is no intention on the part of the demonstrators to cause any inconvenience to the public. Similarly as I mentioned earlier for attracting offences under Sections 353 IPC also no overt acts have been attributed against the demonstrators.

4. I am of the considered view that the proceedings in Crime No.455 of 2019 is liable to be quashed and accordingly, this petition is allowed and the FIR in Crime No.455 of 2019 is quashed in entity. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

TM

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,
Thallakulam Police Station,
Madurai City.

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

Crl.O.P. (MD)No.15204 of 2021

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