



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED : 20.10.2021

CORAM :

THE HONOURABLE **Mr. JUSTICE G.ILANGOVAN**

Crl.O.P.(MD)No.15013 of 2021

and

Crl.MP(MD)Nos.8012 & 8013 of 2021

R.Saravanan @ Saravanakumkar ... Petitioner/Accused No.13

Vs.

1.The Inspector of Police,  
C4, Thilagar Thidal Police Station,  
Madurai City.  
In Crime No.635 of 2015 ... 1<sup>st</sup> Respondent/Complainant

2.K.Rajapandian,  
The Inspector of Police,  
C-4, Thilagar Thidal Police Station,  
Madurai City. ... 2<sup>nd</sup> Respondent/Defacto  
Complainant

**Prayer :** Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire records in S.T.C.No.166 of 2015 pending on the file of the learned Judicial Magistrate Court No.II, Madurai, and quash the same against insofar as the petitioner/Accused No.13 is concerned.

For Petitioner : Mr.M.Shakul Hameed

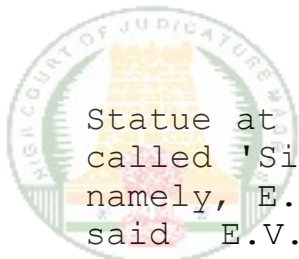
For R1 : Mr.RMS.Sethuraman,  
Additional Public Prosecutor

**ORDER**

This petition is filed seeking quashment of entire records in S.T.C.No.166 of 2015 pending on the file of the learned Judicial Magistrate Court No.II, Madurai.

2. The case of the prosecution in brief:-

On 09.08.2015, at about 11.45 a.m, when the defacto complainant was on patrol duty along with his team, 29 members of people, who are arrayed as accused in this case, unlawfully assembled under the heads of one Jeyam A.Pandi near Kattabomman



Statue at Madurai Town, RMS Road, belonging to the political party called 'Sivashena' and contemning the other political party leader namely, E.V.K.S.Elangovan. They also burnt the effigy of the above said E.V.K.S.Elangovan and also caused disturbance to the public and so, on the basis of the complaint, given by the second respondent herein, a case in Crime No.635 of 2015 was registered for the offence punishable under Sections 143, 188 IPC r/w 74 of Madras City Police Act. After completion of investigation, final report was filed before the concerned Court, which was also taken on file in S.T.C.No.166 of 2015.

3. Seeking quashment of the above said proceedings, the accused, who is arrayed as 13<sup>th</sup>, in the above said criminal case, has filed this petition mainly on the ground that Section 188 IPC is a non-cognizable offence. For which, the police has no right to make an investigation and file final report. Insofar as Section 143 IPC is concerned, it is alleged that it is not an unlawful assembly, since no violation took place in pursuance of the above said agitation and protest.

4. Heard both sides.

5. The learned counsel for the petitioner would rely upon the judgment of this Court reported in **2018 2 LW (crl) 606 Jeevanandham and other Vs. Inspector of Police, Siuvakasi Town Police Station, Virudhunagar District, dated 20.09.2018** for the above said purpose. In the above said judgment, this Court, after analyzing the issue in a thorough manner, come to the conclusion that the offence under Section 188 IPC is a non-cognizable offence. For which, the police has no right to register First Information Report and file final report. So, when we analyze the case, in the above said back ground, we can easily come to the conclusion that the offence under Section 188 IPC is a non-cognizable offence. For which, no cas has been registered by the first respondent, without getting proper permission from the concerned jurisdiction Magistrate.

6. Even though Section 143 IPC is also clubbed along with Section 188 IPC, the facts and circumstances of the case, does not satisfy the requirement of the ingredients of offence under Section 141 Cr.P.C.

7. Section 141 IPC defines 'unlawful assembly' in the following words:-

**"141.Unlawful assembly** - An assembly of five or more persons is designated and 'unlawful assembly', if the common object of the persons composing that assembly is -

**First** - To overawe by criminal force, or show

<https://hcservices.ecourts.gov.in/hcservices> 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 and unlawful assembly."

8. So, from the above observation, the assembly cannot be termed as unlawful one. There is also no material collected in the course of investigation, to the effect that the ban order under Section 32 of Police Act, was also in force. So, none of the ingredients are attracted insofar as the 143 IPC is concerned.

9. Further, in this case, it appears that the petitioner and others made protest, contemning the act of the another political leader, in respect of his speech against the other political functionary. No doubt that every citizen have got a right of assemble as well as protest for expressing their grievance against the act of the other political functionary and criticism is a basic democratic right of each political party and its members are enjoying the matter of right unless and until, it is an unlawful and no action can be taken, against the protest or demonstration, which were conducted in a peaceful manner. So, Section 143 IPC, is not attracted the facts and circumstances of the case.

10. Similarly, Section 74 of Madras City Police Act is also not attract. No complaint has been given by the public to show the nuisance caused by them in the above said agitation. Moreover, even during the course of investigation, no witness has been examined on this aspect, except the police official.

11. Section 74 of Madras City Police Act defines in the following words:-

"Penalty for lighting bonfire, burning any straw or other matter, discharging fire-arms, etc., in or



*near any public place."*

12. Moreover, the judgment of the Hon'ble Division Bench of this Court reported in **A.Santhos Yadhav Vs.The Bar Council of Tamil Nadu and Others 2015 (3) L.W 528, dated 19.06.2015** dealt with similar issue and has concluded that burning of effigy cannot be construed as an offence. It can be construed only as a protest.

13. In view of the above said discussion, I am of the considered view that there is no untoward or illegal activities ensured because of the above said protest. So, continuation of the proceedings against the petitioner herein also will become clear abuse of the process of the Court and law.

14. Since the matter is of the years 2015. Even after a lapse of 6 years, it is kept pending for the minor offence under Section 74 of Madras City Police Act. So, because of the delay, also, the criminal prosecution is pending before the Trial Court is liable to be quashed.

15. Accordingly, the proceedings in S.T.C.No.166 of 2015 pending on the file of the learned Judicial Magistrate Court No.II, Madurai, is hereby quashed and the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (P&A)

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/ /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 Court No.II,  
Madurai.

2.The Inspector of Police,  
C4, Thilagar Thidal Police Station,  
Madurai City.



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

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**and**

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RK/PM (08/11/2021) 5P 4C