



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)No.20072 of 2021

and

CRL.M.P. (MD)Nos.11321 & 11322 of 2021

WEB COPY

Soundirapandi

... Petitioner / Accused No.8

Vs.

1. The State rep. By,
The Inspector of Police,
Anna Nagar police station,
Madurai City.
(Crime No.1292 of 2016)

... Respondent / Complainant

2. Murugaiyan,
Head Constable - No.891,
Armed Reserved 1 Platoon,
Pudukkottai.

... Respondent / Defacto complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the entire records pertaining to the case in S.C.No.482 of 2020 on the file of the learned VI Additional Sessions Judge, Madurai and quash the same in respect of the petitioner.

For Petitioner : Mr.S.Balaji

For R-1 : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor.

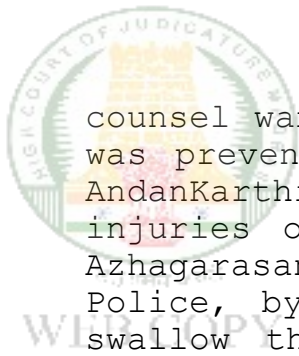
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O R D E R

Heard the learned counsel on either side.

2. This criminal original petition has been filed to quash the proceedings in S.C.No.482 of 2020 on the file of the VI Additional Sessions Judge, Madurai, in so far as the petitioner is concerned.

3. The case of the prosecution is that the petitioner was one of the accused in Crime No.21 of 2016 registered on the file of All Women police station, Thirumangalam. He had to be produced for remand before the Judicial Magistrate, Madurai. On 02.05.2016 after the remand formalities were over, the petitioner was taken back to Central Prison, Madurai, in the police vehicle. In the said police vehicle apart from the petitioner, the accused in other criminal cases were also present. There arose a wordy quarrel between the counsel of the accused, by name, Kathick @ Andankarthick. The said



counsel wanted to have some discussion with his client and the same was prevented by the escort police. Thereupon the said Karthick @ AndanKarthick hit the windshield with his head and inflicted injuries on himself. With the broken glass pieces, one Ajith @ Azhagarasan also did likewise and attacked one Sub Inspector of Police, by name, Muralidharan. Ajith @ Azhagarasan also tried to swallow the glass pieces. Athiparameswaran caused damage to the seats. Other persons who were present in the police vehicle had also raised slogans in an aggressive manner. In this regard, Crime No.1292 of 2016 was registered on the file of Anna Nagar police station for the offences under Sections 143, 147, 189, 353 and 294 (b) of I.P.C. and Section 3(2) of Prevention of Damage to Public Property Act, 1984.

4. Investigation was undertaken and final report was filed and cognizance of the aforesaid offences was also taken. After the conclusion of the committal proceedings, the case is pending for trial in S.C.No.482 of 2020 on the file of the VI Additional Sessions Judge, Madurai. The petitioner is figuring as eighth accused in the said case.

5. The learned counsel appearing for the petitioner reiterated all the contentions set out in the memorandum of grounds and called upon this Court to quash the impugned proceedings as far as the petitioner is concerned.

6. Per contra, the learned Additional Public Prosecutor contended that the petitioner's name has been specifically mentioned not only in the First Information Report but also in the statement recorded under Section 161 of Cr.P.C. He submitted that at this stage, it will not be open to this Court to appreciate the genuineness or reliability of the statements. According to him, the petitioner has to be relegated to face the trial and that no case for quashing has been made out.

7. I carefully considered the rival contentions and went through the materials on record.

8. There is no dispute that the petitioner was an accused in Crime No.21 of 2016 registered on the file of All Women police station, Thirumangalam. The said First Information Report was subsequently quashed vide Order dated 21.09.2017 in Crl.O.P.(MD) No.10700 of 2017. Following the arrest, he had to be produced for remand. He was the sole accused. The petitioner was taken for remand to the Court along with a group of accused. After the remand formalities were over, when the police vehicle was about to leave the Court premises, an altercation arose between an Advocate and the escort police. The escort police refused to permit the Advocate to have a discussion with his client.



9. It is seen that allegations have been specially made only against Karthick @ Andankarthick, Ajith @ Azhagarasan and Athiparameswaran. Of course, the petitioner has also been named in the statements. I find considerable force in the contention of the petitioner's counsel that all the persons who were in the police vehicle were implicated. The petitioner counsel's contention is that this is a case of implication on the basis of general statements. If the petitioner had actually committed any specific act, certainly that would have been pointed out in the statements recorded under Section 161 of Cr.P.C. No such material is forthcoming. The offences under Sections 143 and 147 of I.P.C. cannot be attracted. This is because to constitute an unlawful assembly, a person must have voluntarily done something. In this case, since the petitioner was under police control and custody, his presence along with others will not amount to unlawful assembly. The petitioner did not prevent any public servant from discharging his or her duty. Therefore, Section 353 of I.P.C. is not attracted.

10. Athi Parameswaran, Ajith @ Azhagarasan and Karthick @ Andankarthick had caused damage to the windshields as well as the seats of the police vehicle. The petitioner did not cause damage to any property. Therefore, the offence under Section 3(2) of Prevention of Damage to Public Property Act, 1984 is also not attracted against him.

11. It is true that abusive slogans were allegedly raised. But then, nothing has been specifically attributed to the petitioner. Therefore, Section 294(b) of I.P.C. is also not attracted. Looked at from any angle, prosecuting the petitioner does not appear to be justified or warranted. Therefore, the impugned prosecution is quashed as far as the petitioner is concerned and it will go on against the other accused.

12. This criminal original petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PMU

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.

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To:

1. The VI Additional Sessions Judge,
Madurai.

2. The Inspector of Police,
Anna Nagar police station,
Madurai City.

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

+1 CC to M/s.S.BALAJI, Advocate (SR-39301[F] dated 17/12/2021)

Crl.O.P.(MD)No.20072 of 2021
16.12.2021

MK/28.01.2022/4P/5C