



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.11.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.16966 of 2021

and

Crl.MP(MD)Nos.9177 and 9178 of 2021

Sivaranjith @ Siva Ranjith : Petitioner/A19

Vs.

1.The State rep. By
The Inspector of Police,
Pudukottai Town Police Station,
Pudukottai District.
(Crime No.129 of 2018)

2.Vijayakumar,
Sub Inspector of Police,
Pudukottai Town Police Station,
Pudukottai.

: Respondents

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in connection with the impugned CC No.91 of 2019 on the file of the learned Judicial Magistrate No.1, Pudukottai and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.C.Senthil Murugan

For Respondents : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition is filed to quash the case in CC No.91 of 2019 on the file of the learned Judicial Magistrate No.1, Pudukottai, in so far as the petitioner is concerned.

2.According to the de-facto complainant, on 10.07.2018 at about 10.15 am, on their routine surveillance, found this petitioner and others said to have unlawfully assembled near Old Government Hospital, Pudukottai in order to draw attention of the General public as well as the Government, made demonstration against the Health Minister, in-spite of the prohibition order passed under section 30(2) of the Police Act.



3. Seeking quashment of the above said charge sheet, this petition is filed mainly on the ground that none of the allegations mentioned in the First Information Report, attract any of the offences against this petitioner.

4. Heard both sides.

5. The common and judicial notice has also been taken into account that due to the pandemic situation, on 24.03.2020, throughout the Tamilnadu, curfew has been imposed, under Section 144 Cr.P.C for the purpose of controlling the spread of Covid- 19 virus. At that time, this petitioner and others were found defying the curfew near Nehruji Nagar, Roundana, Dindigul District. No doubt, the petitioner is defying the curfew imposed by the Government.

6. But, however, it is seen that the offence under Section 188 IPC is a non cognizable offence. In respect of which, First Information Report has been filed by the police and this position has been settled by this Court in the judgment reported in the case of **Jeevanandham and other Vs. State and others (2018-2-LW (Cr1.) 606)**. So, Section 188 IPC cannot be made applicable, since police has no power to register the case under Section 188 IPC.

7. Since it is only an enabling provision, no penal provision is attracted, in the absence of failure of production of documents in spite of notice. So, none of the offences mentioned in the First Information Report are sufficient enough to proceed the case against the petitioner.

8. The allegation against this petitioner is that this petitioner along with other accused persons made a protest against the Health Minister, Government of Tamil Nadu, while he was visiting the Government Hospital at Pudukkottai and purposely they prevented the Government Hospital officials from discharging their duty. So to draw the attention of the Government, they made a protest and demonstration. It is also seen that after demonstration and protest, they have been arrested and brought to the Police Station and later, released. So this shows that their intention is not to commit any offence. In a democratic society, protest and demonstration for drawing attention of the Government is permitted, subject to the public order, demonstration can be conducted. Here, there is no allegation to the effect that the protest and demonstration made by this petitioner and others caused nuisance to the public. In the absence of any such allegation, the offence under section 143 IPC will not be attracted.



9. Section 141 IPC defines 'unlawful assembly, which 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.

10. So reading of the above section in comparison with that of the allegations levelled against this petitioner shows that it is not an unlawful assembly. Similarly in section 341 IPC also, no ingredients are attracted. Similarly the allegations against the petitioner for the offence under sections 353 and 506(i) IPC also will not attract. Absolutely, I find no material on record to show that this petitioner along with others, prevented the government officials from discharging their official duty and criminally intimidated them. What happened was only a peaceful demonstration and that too, for direction to the Government to take action for running the Government Hospital. So continuation of proceedings against this petitioner will amount to abuse of process of court and law.

11. Taking into totality of the circumstances, the case in CC No.91 of 2019 on the file of the learned Judicial Magistrate No.1, Pudukottai is required to be quashed in respect of the petitioner and accordingly, the same is quashed as against this petitioner/A19.



Accordingly, this Criminal Original Petition is **allowed**.
Consequently, the connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

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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 No.1,
Pudukottai.
- 2.The Inspector of Police,
Pudukottai Town Police Station,
Pudukottai District.
- 3.Sub Inspector of Police,
Pudukottai Town Police Station,
Pudukottai.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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MGJ(09.12.2021) 4P 5C