



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2022

CORAM:

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.7026 of 2022

and

Crl.M.P.No.3977 of 2022

Noor Mohamed

... Petitioner

Vs

1. State Rep. by Inspector of Police,
Anna Nagar Police Station,
Chennai.
Crime No. 1144 of 2020

2. Panner Selvam
Assistant Engineer,
Ward-105, Chennai Corporation,
Arumbakkam, Chennai-106.

... Respondents

PRAYER: This Criminal Original Petition filed under Section 482 Criminal Original Petition, to call for the records in Crime No.1144 of 2020 on the file of the Respondent Police and quash the same.

For Petitioner : Mr.A.Rajamohamed

For Respondents : Mr.A.Gokulakrishnan

Additional Public Prosecutor

ORDER

The Criminal Original Petition has been filed to call for the records in Crime No.1144 of 2020 on the file of the Respondent Police for the offences under Sections 143, 188, 269 of IPC and quash the same.

2. The case of the prosecution is that on 06.12.2020 at about 10.30 a.m., the petitioner/accused along with 20 members belongs to SDPI party without following Covid-19 protocol and regulations, assembled near MMDA colony main road, Chennai and participated in a protest without any prior permission from the concerned authority. Based on the complaint of the respondent, a case in Crime No.1144 of 2020 was registered for the offences punishable under Sections 143, 188 and 269 of IPC.

3. This petition is filed mainly on the ground that as far



as Sections 143, 188 and 269 of IPC are concerned, the petitioner is a citizen of India, who conducted a demonstration in a democratic manner and there is no intention on the part of the petitioner to spread the disease to others.

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4. The learned counsel appearing for the petitioner would further submit that the facts of the case are similar to the case covered in the decision reported in 2018 2 LW (Crl) 606 [Jeevanandham and others Vs The Inspector of Police Velayuthampalayam Police Station, Karur District] dated 20.09.2018 and in Sri Raja Vs Inspector of Police, Sivakasi Town Police Station Virudhunagar District and other in Crl.O.P(MD). No.7922 of 2019 etc batch dated 30.08.2019. He would further submit that though the protest was conducted during the Covid-19 pandemic period, there is no material to show that neither the petitioner and his party members were affected by Covid-19 nor they indulged in any malignant act likely to spread infection of disease dangerous to life.

5. Learned Additional Public Prosecutor would submit that the petitioner along with his party members during the Covid-19 pandemic period have breached the Covid-19 pandemic protocol and in violation of the promulgatory orders, have assembled and protested against the Government. He would further submit that the petitioner had not obtained any orders for conducting protest.

6. Heard the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor appearing for the respondents and perused the materials available on record.

7. The offences under Sections 143, 188 and 269 of IPC are concerned, as per the contents of the First Information Report, it is seen that the petitioner protested in an unlawful manner during the pandemic period. It is a trivial matter in which no offence of grievous nature is involved. Even though Section 144 Cr.P.C order was in force, during the relevant time the respondent police ought to have warned the petitioner to go indoor, instead of that, they filed a case. It is also not the case of the respondent that at the time of the incident, the petitioners were affected by Covid-19 virus. So the contention that conducting protest during the pandemic period will spread the disease is without any basis. Section 143 of IPC is concerned, it specifies the period of punishment for a person who is a member of an unlawful assembly and Section 269 of IPC is concerned, it specifies the negligent act to spread infection of any disease dangerous to life and Section 188 is concerned, it specifies the disobedience to order duly promulgated by public servant.



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8. Section 143 of IPC defines punishment as under:-

143. Punishment –

Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

The expression "unlawful assembly" is defined in Section 141 of IPC and any member of the said unlawful assembly is punishable under Section 143 of IPC. If the object of the assembly is not unlawful, the Act cannot attract Section 141 of IPC. So any person forming such assembly cannot be convicted under Section 143 of IPC nor can be convicted either under Section 147 or Section 149 of IPC.

9. Section 269 of IPC defines negligent act likely to spread infection of disease dangerous to life as under:-

269. Negligent act likely to spread infection of disease dangerous to life--

Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

10. Section 188 of IPC defines disobedience to order duly promulgated by public servant to spread infection as under:-

"188. Disobedience to order duly promulgated by Public Servant:

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction.

Shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause



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danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

11. In the light of the above definitions when we look into the FIR, we can easily say that it cannot be termed as unlawful assembly. Similarly for attracting the offences under Sections 143, 188 and 269 IPC also, there are no materials to show that the petitioner was also affected by Covid-19 virus and because of their assembly, virus spread to others. Since in the absence of any such materials on record, the offences punishable under Sections 143, 188 and 269 IPC are not attracted.

12. Considering the nature of allegations and the offences involved in this case, this Court is of the opinion that protest in a democratic manner without any violence cannot be termed as an unlawful assembly and thereby, the proceedings is nothing but an abuse of process of law.

13. Taking all these aspects into account, this Court is of the considered view that the proceedings pending in Crime No.1144 of 2020 on the file of the respondent police is liable to be quashed and the same is quashed. Accordingly, this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

nr/nti
To

1. The Inspector of Police,
Anna Nagar Police Station,
Chennai.
2. The Public Prosecutor,
High Court, Madras.

+2cc to Mr.A.Rajamohamed, Advocate, S.R.No.21405

Crl.O.P.No.7026 of 2022 and
Crl.M.P.No.3977 of 2022

AK-II(CO)
CT 06/05/2022