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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.04.2022

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

CrI.O.P.No.9556 of 2022
and
CrI.M.P.Nos.5582 & 5585 of 2022

N.Karthick

... Petitioner

Vs.

1. The State Represented by:-
The Inspector of Police,
Race Course Police Station,
Coimbatore.
(Crime No.1287 of 2020)

2. A.Sekar

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 Cr.P.C., pleaded to call for the records in S.T.C.No.5448 of 2021, on the file of the learned Judicial Magistrate No.I, Coimbatore and quash the same.

For Petitioner : Mr.G.R.Deepak
For R1 : Mr.A.Gokulakrishnan
Additional Public Prosecutor.

O R D E R

This Criminal Original Petition has been filed to call for the records in S.T.C.No.5448 of 2021, on the file of the learned Judicial Magistrate No.I, Coimbatore and quash the same.

2. The case of the prosecution is that on 28.12.2020, at around 06.15 p.m., the petitioner, belonging to DMK party and also a Member of Legislative Assembly of Singanallur Constituency, Coimbatore and 10 other persons had gathered at Pappanaickenpalayam, Venugopal Layout Road and protested against the ADMK party and conducted Grama Sabha in unlawful manner by supporting the DMK party without any permission and thereby, causing hindrance to the traffic and the public. Based on the complaint give by the 2nd respondent, a case was



registered in Crime No.1287 of 2020 against them for the offences under Sections 143, 341 and 269 of IPC and the respondent, after completion of investigation, filed a final report in S.T.C.No.5448 of 2021 on the file of the learned Judicial Magistrate No.I, Coimbatore District.

3. The learned counsel for the petitioner would submit that the petitioner and 10 other persons are the citizens of India, who have assembled in a lawful manner. There was absolutely no violence and that there was no intention on the part of the petitioners to spread infection of disease dangerous to life. There is absolutely no material to show that the petitioners were infected with any disease dangerous to life. Thereby, the proceedings against the petitioners is nothing but abuse of process of law.

4. The learned counsel 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 the case of 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 petitioners were affected by Covid-19 nor they indulged in any Malignant Act likely to spread infection of disease dangerous to life.

5. The learned counsel for the petitioner also relied on the Judgment of the Madurai Bench of this Court in the case of B.Vincent Balaji Vs The Inspector of Police, Madurai District and another made in Crl.O.P(MD).No.14795 of 2021 dated 01.10.2021 and the Judgment of this Court in the case of William Carry @ William Geri Vs The Inspector of Police, Tiruppur District made in Crl.O.P.No.25413 of 2021 dated 03.01.2022.

6. The learned Additional Public Prosecutor for the respondent would submit that the accused in violation of Covid-19 protocol during the Covid-19 pandemic period had formed into an unlawful assembly and indulged in a protest in violation of the Covid-19 protocol, thereby had attempted to spread infection to others. However, he would fairly concede that there was no violence.

7. Heard the learned counsel and perused the materials available on record.



8. The offence under Sections 143, 341 and 269 of IPC are concerned, as per the contents of the First Information Report, it is seen that the petitioner and other accused protested in an unlawful manner and conducted Grama Sabha during the pandemic period and they have dispersed on being directed by the police officials. 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 and other accused to go in-door, instead of that, they filed a case. It is also not the case of the respondent that at the time of the incident, the petitioner and other accused 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.

9. Further, 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.'

10. 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. Thereby any person forming such assembly cannot neither be convicted under Section 143 of IPC nor can be convicted either under Section 147 or Section 149 of IPC.

11. 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."

12. In the light of the above definitions, when we look into the final report, we can easily say that it cannot be termed as unlawful assembly. Similarly for attracting the offences under Sections 143, 341 and 269 IPC also, there are no materials to show that the petitioner and other accused were 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 offence punishable under Sections 143, 341 and 269 IPC are not attracted.

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13. Considering the nature of allegations and the offences involved in this case, this Court is of the considered view that protesting in a non-violent manner cannot be treated as an unlawful assembly. Further, it is also not the case that the accused were affected with Covid-19, so as to spread the infection to others.

14. Taking all these aspects into account, this Court is of the considered view that the proceedings in S.T.C.No.5448 of 2021 on the file of the learned Judicial Magistrate No.I, Coimbatore, is liable to be quashed and the same is quashed.

15. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rgi

To

1. The Judicial Magistrate No.1,
Coimbatore.
2. The Inspector of Police,
Race Course Police Station,
Coimbatore.
3. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.G.R.Deepak, Advocate, S.R.No.29181

+1cc to the Public Prosecutor, S.R.No.28429

Crl.O.P.No.9556 of 2022

and

Crl.M.P.Nos.5582 & 5585 of 2022

RGN[co]

NSK/20/05/2022