



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 01.04.2022

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD) No.6121 of 2022

in

Crl.M.P.(MD) Nos.4246 & 4296 of 2022

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Ariharan

...Petitioner/ Accused No.11
Vs.

1. The State Represented by its
The Inspector of Police
Kudankulam Police Station
Tirunelveli District - 627104.
(Crime No.369 of 2012)

... 1st Respondent/
Investigating Officer

2. R.Senthil Kumar,
Village Administrative Officer,
Vijapathi Village,
Radhapuram Taluk.

... 2nd Respondent/
Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the entire records pertaining to P.R.C.No.60 of 2020 in Crime No.369 of 2012 on the file of the Judicial Magistrate, Radhapuram, and quash the same in so far as the petitioner is concerned.

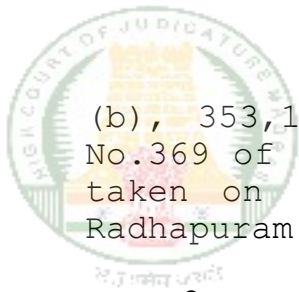
For Petitioner : M/s. Maurya L.P.

For Respondents : Mr.R.M.Anbunithi
No.1 Additional Public Prosecutor

ORDER

This petition has been filed seeking direction to call for the entire records pertaining to P.R.C.No.60 of 2020 in Crime No.369 of 2012 on the file of the Judicial Magistrate, Radhapuram, and quash the same.

2.The case of the prosecution is that on 03.10.2012 at about 2.30 pm., in the name of conducting agitation against the formation of Koodangulam power plant the petitioner and others digged the road by using a JCB and caused loss to the state exchequer. When the petitioner and others informed about ban under Section 144 of Cr.P.C, they abused one Vijayapathi, Village Administrative Officer and his assistant in filthy language and threatened them with dire consequences. Hence, the petitioner along with other accused persons were charged for the offence punishable under sections 147, 148, 294



(b), 353,188,506(ii) of IPC and Section 3 of TNPPDL Act in Crime No.369 of 2012 and after completion of investigation ,it has been taken on file in PRC No.60 of 2020 by the Judicial Magistrate, Radhapuram.

3.Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the first respondent.

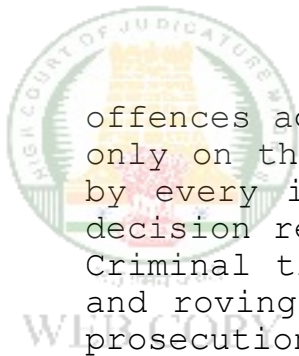
4.The learned counsel appearing for the petitioner would submit that the Coordinate Bench of this court in a batch of cases viz., Crl.OP(MD)Nos.2064 of 2020 etc., dated 13.03.2020 has observed that on the strength of mere omnibus statement recorded under Section 161 Cr.P.C, this petitioner has also been roped in as an accused. The petitioner has not rushed to the Court immediately. At the same time, continued pendency of the impugned prosecution constitutes an abuse of legal process.

5. At the time of agitation, the petitioner was not at all involved in the occurrence and without properly verifying the identify of the persons during the course of investigation, how the police is able to figure out this petitioner among 5000 nos of people is also unbelievable and no materials have been collected during the course of investigation to identify each and every person involved in the occurrence.

6.No doubt, in the final report, it has been stated that more than 5000 people involved in the occurrence including women and children, who assembled in the seashore area for making protest. Their aim was not to cause any damage to the public property or damage to anyone, much less than the police officials. It appears that it was a peaceful demonstration at one stage. Finding that at one stage it went to uncontrollable stage of dispersing the mass, in that process, it appears that two vehicles belongs to the Police Department have been damaged. No doubt that causing damage to the public property is a serious offence, which has to be properly tried. But at the time same time, the circumstance under which the above said occurrence taken place is also kept in mind.

7.As mentioned earlier, it was a fear protest made by the villagers, feeling that if any new power plant is established, their very existence will become danger. No doubt, this was a false apprehension in the minds of the villagers. That is why, the Hon'ble Supreme Court in the decision reported in the case of ***G.Sundarrajan Vs. Union of India [(2013) 6 SCC 640]*** has elaborately discussed and requested the Government to educate the people and take all necessary steps to remove the misapprehension in their minds.

8. The Petitioner's implication in the present matter is ~~solely~~ and mere-omnibus statement may not constitute



offences against the Petitioner since criminal trial is contemplated only on the basis of definitive allegation of commission of offence by every individual involved. As the Hon'ble Supreme Court in the decision reported in 2012(13)SCC 614 has categorically held that 'A Criminal trial cannot be allowed to assume the character of fishing and roving enquiry. It would not be permissible in law to permit a prosecution to linger, limp and continue on the basis of a mere hope of expectation that in the trial some material may be found to implicate the accused. Such a course of action is not contemplated in the system of criminal jurisprudence that has been evolved by the Courts over the years. A criminal trial, on the contrary, is contemplated only on definitive allegations, prima facie, establishing the commission of an offence by the accused which fact has to be proved by leading unimpeachable and acceptable evidence in the course of the trial against the accused.

9. The Hon'ble Supreme Court in G.Sundarrajan Vs.Union of India reported in 2013(6)SCC wherein the whole incident as well as establishment of Koodangulam Nuclear Power Plant Project has been discussed. It is a classic case of recent times, which deal and discuss about the necessity of establishing such power plants in the interest of the development of the country and scientific explorations. A detailed study has been made in this case and during the course of the judgment, the Hon'ble Supreme Court is of the view that all the cases that have been registered against the protestors touching the protest against the establishment of the power plant may be dropped. Para No.244.14 of the judgments reads as under:

244.14 Endeavour should be made to withdraw all the criminal cases filed against the agitators so that peace and normalcy be restored at Kudankulam and nearby places and steps should be taken to educate the people of the necessity of the plant which is in the largest interest of the nation particularly the state of Tamil Nadu.

10. Further it is settled law that criminal trial cannot be allowed to assume the character of fishing and roving enquiry on contrary criminal trial is contemplated only on definite allegations, prima facie establishing the commission of an offence by the accused which fact must be proved by leading unimpeachable and acceptable evidence.

11. All the allegations are general in nature it is only a general allegation made against this petitioner. Since such like this nature, continuation of the proceedings against the petitioner will amount to abuse of process of court and law.

12. In view of the above, this criminal original petition is allowed and accordingly, the entire proceedings in P.R.C.No.60 of 2020 in Crime No.369 of 2012 on the file of the Judicial Magistrate,



Radhapuram, Tirunelveli is hereby quashed as against the petitioner.
Consequently connected miscellaneous petitions are also closed.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

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To

1.The Judicial Magistrate,
Radhapuram, Tirunelveli.

2. The Inspector of Police
Kudankulam Police Station
Tirunelveli District - 627104.

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

+1 CC to M/s.L.P.MAURYA, Advocate (SR-16433[F] dated 04/04/2022)

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RD(18.05.2022) 4P 5C