



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 29/08/2022

CORAM:

WEB COPY

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP(MD)No.1428 of 2019

and

Crl.MP(MD)No.704 of 2019

1.Anthoniyappa
2.John Bosco
3.Rajesh

: Petitioners/A1 to A3

Vs.

1.The State rep. by
The Inspector of Police,
Thoothukudi South Police Station,
Thoothukudi.

: R1/Complainant

2.Sivarama Chandran
Assistant Director of Fisheries
Department of Fisheries,
Thoothukudi.

:R2/De-facto complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to the case in CC No.251 of 2018 on the file of the Judicial Magistrate No.1, Thoothukudi and quash the same

For Petitioners : Mr.C.Jeganathan
for M/s.Veera Associates

For Respondents : Mr.P.Kottai Chamy
Government Advocate
(Criminal side)

O R D E R

This criminal original petition is filed seeking quashment of the case in CC No.251 of 2018 on the file of the Judicial Magistrate No.1, Thoothukudi and quash the same



2.The case of the prosecution in brief:-

The accused persons are fishermen by profession and they are doing the fishing work with speed board. On 18/09/2017, the Assistant Director of Fisheries Department of Fisheries, Thoothukudi, issued a ban order prohibiting the deep-seas fishing. Over the above said ban order, by order, dated 07/06/2018, there was a direction to consider the issuance of the temporary registration certificate for fishing. On 13/06/2018 at about 10.30 am, when the de-facto complainant and others were present in the harbour, the accused persons along with other labours numbering about 100, assembled and trespassed into the office, threatened and criminally intimidated the de-facto to issue temporary registration certificate for their fishing boats also. They were confined till 11.00 pm. Based upon the complaint given by the de-facto complainant, the case was registered and after completing the formalities of investigation, final report has been filed finding that the accused persons have committed the offences under sections 342, 353 and 506(i) IPC.

3. Seeking quashment of the same, this petition has been filed by all the accused persons on the ground that the petitioners are the office-bearers of the Deep Sea Merchantized Boat Fishing Development Association, Thoothukudi. Against the ban order, that was imposed by the second respondent prohibiting the deep sea fishing, WP(MD)No.5840 of 2018 was filed for a direction. By order, dated 07/06/2018, an interim order was passed directing the second respondent to consider the application forwarded by the Director General of Shipping, Mumbai. In pursuance of the above said order, they sent a communication to the second respondent to consider the representation for issuing the provisional registration certificate. So the fishermen numbering about 100 approached the second respondent for the professional permission. But that was refused by the second respondent. So in a democratic way, they made a protest in front of the office. But wrong case has been registered as if they have been confined and prevented them from discharging their official duty till 11.00 pm. If really such sort of confinement, immediately the de-facto complainant ought to have contacted the police. But the complaint has been given after a lapse of two days. This shows that the allegations made in the complaint are not true.

4. Heard both sides.

5. Even though different versions as usual have been projected by the respondents as well as the petitioners with regard to the above said occurrence, finding that all these petitioners are only fishermen and only their Association made the above said demand for registration and issue of the provisional licence. They were directed to file an unconditional apology and undertaking affidavit



apology, they also produced the same. So the second respondent is the de-facto complainant was directed to present before this court and express his view with regard to the acceptance of the above unconditional apology and undertaking.

6. At one point of time, the second respondent was presented before this court and he would submit that he will get instructions from his higher officials. Later, he told that they are not agreeing for any such acceptances of the undertaking affidavit. So according to the second respondent, when a serious offence of illegally detaining and confining the officials have been made against the petitioners, they should not be allowed to go scot free on the basis of the mere undertaking affidavit.

7. No doubt that there is some sort of allegation, which is of serious in nature has been made against the petitioners. But absolutely, the petitioners did not have any personal interest. But only for their livelihood, they approached the second respondent for issuance of the licence or permission, as the case may be. When that was refused, it appears that they made some sort of trouble. But this court is of the considered view that the even though the offence or occurrence would have been avoided by the petitioners. If really detained the second respondent till the midnight, the de-facto complainant would have contacted the police by informing them about the occurrence. But it appears that no such steps have been taken by the de-facto complainant. They remained silent for about two days and only after two days, this present complaint has been registered.

8. It is the contention of the petitioners to the effect that a peaceful protest in a democratic manner was conducted by them. Even it is so, they ought to have got permission from the concerned police before making such sort of protest in front of the public place. That was also not done. It appears that equally both the parties have been at fault.

9. Now whatever it may be, this court is of the considered view that the issue can be treated as a trivial one and considering the demand that has been made by the petitioners for their livelihood; the affidavit of undertaking and the unconstitutional apology that has been done by the petitioners must be accepted.

10. This court is of the considered view that on the basis of the undertaking affidavit and the unconditional apology tendered by the petitioners, the proceedings against them may be quashed. If any violation of the undertaking affidavit is noticed, then the respondent police is at liberty to proceed against the petitioners by registering a new case or proper proceedings.

11. With the above said liberty, this Criminal Original Petition is **allowed**. The impugned proceedings in CC No.251 of 2018 on the file of the Judicial Magistrate No.1, Thoothukudi, is hereby



WEB COPY

Crl.OP(MD)



19

quashed against the petitioners. Consequently, () ed
Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/11/2022

Sub Assistant Registrar (CS)

To,

- 1.The Judicial Magistrate No.1,
Thoothukudi.
- 2.The Inspector of Police,
Thoothukudi South Police Station,
Thoothukudi.
- 3.The Assistant Director of Fisheries,
Department of Fisheries,
Thoothukudi.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
5. The Judicial Magistrate No.1, Thoothukudi

+1 CC to M/s.VEERA ASSOCIATES, Advocate (SR-41841[F] dated
30/08/2022)

Crl.OP(MD)No.1428 of 2019

29.08.2022

AMS(31.10.2022) 4P 7C