



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31 .01.2022

CORAM:

**THE HON'BLE MR JUSTICE G.ILANGO VAN**

Crl.O.P.(MD)Nos.19355, 19356 and 19962 of 2018

and

Crl.MP(MD)Nos.8751 to 8754, 9160, 9161 of 2018

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**(1).Crl.OP(MD)No.19355 of 2018:-**

Mr.S.P.Udayakumar

: Petitioner/A1

Vs.

1.State represented by  
Inspector of Police,  
Kudankulam Police Station,  
Tirunelveli District.  
(Crime No.158 of 2012)

: R1/Complainant

2.Mr.Sureshkumar,  
Constable 2965,  
Kudankulam Police Station,  
Tirunelveli District.

: R2/  
De-facto Complainant

**Prayer:** Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the entire records pertaining to the case in in CC No.360 of 2014 pending on the file of the Judicial Magistrate, Vallioor and quash the same.

**(2).Crl.OP(MD)No.19356 of 2018:-**

Mr.S.P.Udayakumar

: Petitioner/A1

Vs.

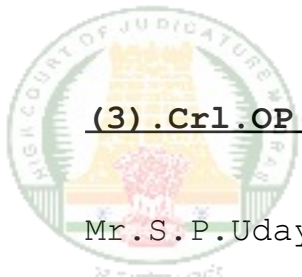
1.State represented by  
Inspector of Police,  
Kudankulam Police Station,  
Tirunelveli District.  
(Crime No.371 of 2012)

: R1/Complainant

2.Mr.S.Subramanian  
Tahsildhar,  
Radhapuram Taluk,  
Tirunelveli District.

: R2/De-facto Complainant

**Prayer:** Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the entire records pertaining to the case in in CC No.365 of 2014 pending on the file of the Judicial Magistrate, Vallioor and quash the same.



(3).Crl.OP(MD)No.19962 of 2018:-

Mr.S.P.Udayakumar

: Petitioner/A1

Vs.

1.State represented by  
Inspector of Police,  
Kudankulam Police Station,  
Tirunelveli District.  
(Crime No.404 of 2012)

: R1/Complainant

2.Mr.S.Subramanian  
Tahsildhar,  
Radhapuram Taluk,  
Tirunelveli District.

: R2/De-facto Complainant

**Prayer:** Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the entire records pertaining to the case in in CC No.366 of 2014 pending on the file of the Judicial Magistrate, Vallioor and quash the same.

For Petitioner : Mr.T.Lajapathi Roy  
(in all cases)

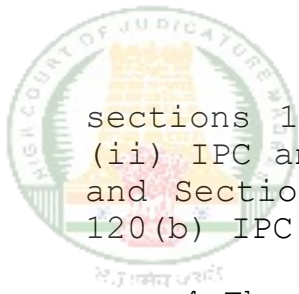
For Respondent : Mr.E.Antony Sahaya Prabahar  
(in all cases) Additional Public Prosecutor

**COMMON ORDER**

The petitioner has been figured as A1 in all these cases. All the cases were registered in connection with Koodankulam agitation.

2.The case of the prosecution in Crl.OP(MD)No.19355 of 2018 is that on 09/04/2012 between 8.00 am and 4.15 pm, all the accused persons assembled near Idinthakarai Luthu Madha Chruch illegally and demanded closure of the Atomic Power Centre, which was established at Kudamkulam. They also abused the political leaders and involved in criminal conspiracy. Based upon the complaint, a case has been registered in Crime No.158 of 2012 registered for the alleged offences under sections 143, 188, 151, 153(A), 500 IPC r/w 120(b) IPC.

3.The case of the prosecution in Crl.OP(MD)No.19356 of 2018 is that on 08/10/2012 between 08.00 am and 04.00 pm, this petitioner along with the other co-accused persons assembled illegally and conspired in unlawful assembly entered into the prohibited area in country boats and staged protest, also raised slogans condemning the Government of India, criminally intimidated the Police and Revenue Department personnel. Based upon the complaint, a case in Crime No.371 of 2012 has been registered for the alleged offences under



sections 143, 147, 148, 149, 188, 291, 294(b), 353, 447, 500, 506 (ii) IPC and section 2(8-d) of the Indian Official Secrets Act, 1923 and Section 5 of Tamilnadu Marine Fishing Regulation Act, 1983 and 120(b) IPC.

4.The case of the prosecution in Crl.OP(MD)No.19962 of 2018 is that on 10/10/2012 at about 9.30 am, this petitioner along with the other co-accused persons assembled illegally and conspired in unlawful assembly, entered into the prohibited area in about 150 country boats, staged protest, raised slogans condemning the Government of India, criminally intimidated the police and revenue personnel. On the basis of the complaint, a case in Crime No.404 of 2012 has been registered for the offences under Sections 143, 147, 148, 149, 291, 294(b), 447, 500, 506(ii) and 188 IPC, section 2(13-d) of Indian Officials Secret Act, 1923 and section 5 of the Tamil Nadu Marine Fishing Regulation Act, 1993 r/w section 120(b) of IPC.

5.Challenging and seeking quashment of the final reports as stated above, all these petitions have been filed by the petitioner on the ground that none of the allegations mentioned in the FIR attracts against him.

6.Heard both sides.

7.The Coordinate Bench of this court in a batch of cases viz., Crl.OP(MD)Nos.2064 of 2020 etc., dated 13.03.2020 which were filed seeking quashment of the case that has been registered against the protestors of the Kudankulam Establishment of Atomic Power Plant, has observed like this:-

*"On the strength of mere omnibus statement recorded under Section 161 Cr.P.C, this petitioner has also been roped in as accused. The petitioner has not rushed to the Court immediately. Continued pendency of the impugned prosecution constitutes an abuse of legal process. In this view of the matter, the impugned proceedings against the petitioner stands quashed. These Criminal Original Petitions are allowed accordingly. "*

8.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 Governments to educate the people and take all necessary steps to remove the misapprehension in their minds. The Hon'ble Supreme Court requested all the Governments to drop the proceedings that has been initiated against the protestors.



But even after a lapse of seven years, no steps are taken to withdraw the criminal prosecution. A speedy trial is a fundamental right available to the accused persons.

9.As mentioned in the above said judgment, the direction of the Hon'ble Supreme Court was not complied by the Government so far. Even when the matter was heard and clarification was sought from the learned Additional Public Prosecutor as to the proposal of the Government, the learned Additional Public Prosecutor was not in a position to inform the position that has to be taken by the Government in this regard. So it appears that all the cases now are pending before various courts. The petitioner is the Leader of the above said protesters. He has also objected the formation and establishment of the Atomic Centre.

10.Coming back to the allegation against this petitioner, he along with other persons assembled in the place of occurrence and conspired, abused the political leaders in fifthly language. But as mentioned in the above said batch of cases, there was apprehension in the minds of the people in that area, the danger likely to be caused by the Atomic Centre and that is why, the Hon'ble Supreme Court directed the Government to educate the the people and take all necessary steps to remove the misapprehension in their minds. So mere apprehension in the minds of the local people and making protest cannot be construed as a illegal activity, at no stretch of imagination. So assembly of the persons under the leadership of this petitioner will not come under the definition of unlawful assembly. So also, the allegation that they also abused the political leaders is also not supported by any proper facts. The assembly of the persons was treated as unlawful assembly and by observing the fact FIR has been registered and final report has also been filed. So continuance of the proceedings will amount to clear abuse of process of court.

10.In view of the above, these criminal original petitions are allowed and accordingly, the entire proceedings in CC Nos.360, 365 and 366 of 2014 on the file of the Judicial Magistrate, Valliyoor are hereby quashed as against the petitioner. Consequently, connected Miscellaneous Petitions are cloed.

Sd/-

Assistant Registrar (CS-III)

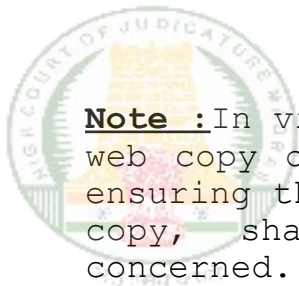
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Sub Assistant Registrar(CS)

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<https://hcservices.ecourts.gov.in/hcservices/>



**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.

WEB COPY

**To:**

- 1.The Judicial Magistrate,  
Vaillioor,
- 2.The Inspector of Police,  
Kudankulam Police Station,  
Tirunelveli District-627 104.
3. The Tahsildhar,  
Radhapuram Taluk,  
Tirunelveli District.
- 4.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+3 CC to M/s.T.LAJAPATHI ROY, Advocate ( SR-3379[F] dated 01/02/2022 )

**Crl.O.P. (MD)Nos.19355, 19356 and 19962 of 2018**  
**31.01.2022**

RD(02.03.2022) 5P 8C