



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
RESERVED ON : 14.12.2021
PRONOUNCED ON: 20.01.2022
CORAM
THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

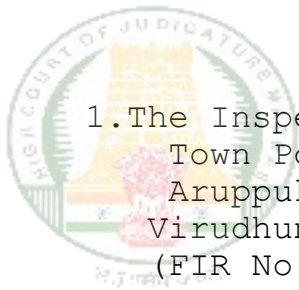
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Crl.O.P. (MD) No.20938 of 2018
and
Crl.M.P. (MD) Nos.9684 and 9685 of 2018

- 1.Thilagaraj
- 2.Jayaraj
- 3.Vetrivel
- 4.Sivasamy
- 5.Vinothkumar
- 6.Suthankumar
- 7.Vishnu
- 8.Kannan
- 9.Sundaram
- 10.Elumalaiyan
- 11.Chellapandi
- 12.Vignesh @ Jegadeesan
- 13.Raja
- 14.Vijay
- 15.Anburaj
- 16.Babu
- 17.Jayaraman
- 18.Ravikumar
- 19.Ganesh@ Muthiah Pandi
- 20.Saravanakumar
- 21.Vignesh
- 22.Dinesh
- 23.Mathavan
- 24.Saravanan @ Manoharan
- 25.Desinguraja
- 26.Muthumurugan
- 27.Sivakumar
- 28.Gopi @ Gopi Ananth
- 29.Ganesan
- 30.Raja
- 31.Maheswaran
- 32.Lakshumanapandian
- 33.Karthigaiselvan @ Karthick Pandian

: Petitioners/Accused Nos.1 to 33

Vs.



1.The Inspector of Police,
Town Police Station,
Aruppukkottai,
Virudhunagar District.
(FIR No.731 of 2015)

2.Parthiban,
Sub Inspector, Town Police Station,
Aruppukkottai,
Now working at
Civil Supply and Crime Investigation Department,
Thoothukudi. : Respondents/Complainants

PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records pertaining to S.T.C.No.1238 of 2016, on the file of the Judicial Magistrate Court, Aruppukkottai, Virudhunagar District and quash the same.

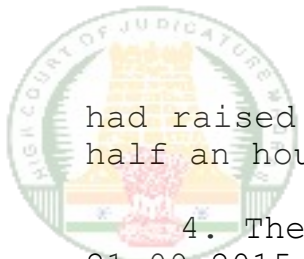
For Petitioners : Mr.R.Murugappan
For Respondents : Mr.M.Muthumanikkam
Government Advocate(Crl.Side)
for R.1
: No Appearance for R.2

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to the case in S.T.C.No.1238 of 2016, on the file of the Judicial Magistrate Court, Aruppukkottai, Virudhunagar District and quash the same.

2. The petitioners 1 to 33 are the accused in S.T.C.No.1238 of 2016, on the file of the Judicial Magistrate Court, Aruppukkottai. The second respondent has registered a case in Cr.No.731 of 2015 against 33 named persons and 200 persons for the offences under Sections 143, 188 and 341 I.P.C. The first respondent, after completing the investigation, has laid a final report under Section 173 Cr.P.C., for the offences under Sections 143, 341 and 188 I.P.C. and that the case has been taken on file in S.T.C.No.1238 of 2016, on the file of the Court of Judicial Magistrate, Aruppukkottai.

3. The case of the prosecution is that on 21.09.2015 at 04.45p.m., when the petitioners and others had taken out Vinayagar Idol procession from Aruppukkottai Maharani Theatre along with traditional musical instruments and at the place near new bus stand, the second respondent had instructed the petitioners and others to stop playing the traditional musical instruments as there was a mosque nearby and that the petitioners objecting to the direction,



had raised slogans, disrupting the traffic and staged a protest for half an hour.

4. The learned Counsel for the petitioners would submit that on 21.09.2015 at Aruppukkottai, there was no proclamation order passed by any officer of the Government, that the petitioners had assembled lawfully, taken out Vinayagar Idol procession after taking necessary permission, that playing the traditional musical instruments during the religious procession is one of the essential event, that no general public had lodged any complaint about the disrupting of traffic caused by the petitioners and that the registration of the case and the consequent filing of charge sheet are nothing but, abuse of process of law.

5. Heard the learned Counsel for the petitioners and the learned Government Advocate (Crl.Side) appearing for the first respondent and perused the materials placed on record.

6. At the outset it is necessary to refer the judgment of the Honourable Supreme Court in **C. Muniappan & Ors vs State Of Tamil Nadu** in **CRIMINAL APPEAL NOS. 127-130 OF 2008**, dated 30.08.2010 and the relevant passages are extracted hereunder:

"20. Section 195(a)(i) Cr.PC bars the court from taking cognizance of any offence punishable under Section 188 IPC or abetment or attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order. The object of this provision is to provide for a particular procedure in a case of contempt of the lawful authority of the public servant. The court lacks competence to take cognizance in certain types of offences enumerated therein. The legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill-will or frivolity of disposition and to save the time of the criminal courts being wasted by endless prosecutions. This provision has been carved out as an exception to the general rule contained under Section 190 Cr.PC that any person can set the law in motion by making a complaint, as it prohibits the court from taking cognizance of certain offences until and unless a complaint has been made by some particular authority or person. Other provisions in the Cr.PC like sections 196 and 198 do not lay down any rule of procedure, rather, they only create a bar that unless some requirements are complied with, the court shall not take cognizance of an offence described in those Sections. (vide Govind Mehta v. The State of Bihar, AIR 1971 SC 1708; Patel Laljibhai Somabhai v. The State of Gujarat, AIR 1971 SC 1935; Surjit Singh & Ors. v. Balbir Singh, AIR 1996 SC 1096) 3 SCC 533; State of Punjab v. Raj Singh &



Anr., (1998) 2 SCC 391; K. Vengadachalam v. K.C. Palanisamy & Ors., (2005) 7 SCC 352; and Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr., AIR 2005 SC 2119).

27. Undoubtedly, the law does not permit taking cognizance of any offence under Section 188 IPC, unless there is a complaint in writing by the competent Public Servant. In the instant case, no such complaint had ever been filed. In such an eventuality and taking into account the settled legal principles in this regard, we are of the view that it was not permissible for the trial Court to frame a charge under Section 188 IPC."

7. It is pertinent to note that Section 195 Cr.P.C, bars taking cognizance of any offence punishable under Sections 172 to 188 I.P.C., except on a complaint in writing given by the public servant concerned or some other public servant to whom he is administratively subordinate. A learned Single Judge of this Court in **Jeevanandham and Others vs State, represented by the Inspector of Police**, reported in **2018(2) LW (Cr1.,) 606**, after surveying the judgments of the Honourable Apex Court and of this Court, has held that the Police Officer cannot register a First Information Report, for an offence under Section 188 I.P.C., and the Judicial Magistrate cannot take cognizance of the offence, based on the final report filed under Section 173(2) Cr.P.C.

8. As per the above settled legal position, there must be a complaint by a public servant who is lawfully empowered under Section 195 Cr.P.C., and it is mandatory and that therefore, the non-compliance of the same, will make the proceedings void ab initio and as such, the charge sheet laid under Section 188 I.P.C., has to necessarily be quashed.

9. Now turning to the offences under Sections 143 and 341 I.P.C., it is necessary to refer the following passages in **Jeevanandham's case** above referred.

"32.....

2.In all the cases, the assembly of persons were expressing dissatisfaction on the governance and claiming for minimum rights that are guaranteed to an ordinary citizen. If such an assembly of persons are to be trifled by registering an FIR under Section 143 of IPC and filing a Final Report for the very same offence, no democratic dissent can ever be shown by the citizens and such prohibition will amount to violation of fundamental rights guaranteed under the Constitution. A reading of the Final Report does not make out an offence under Section



341 of Cr.P.C since any form of an agitation, will necessarily cause some hindrance to the movement of the general public for sometime. That by itself, does not constitute an offence of a wrongful restraint.

10. As rightly held by this Court in **Jeevanandham's case**, the violation of Section 30(2) of the Police Act will not constitute an offence under Section 143 I.P.C., as an order passed under Section 30(2) of the Police Act is only regulatory in nature, by which, the police cannot prohibit any agitations. The prosecution in order to invoke Section 341 I.P.C., has to establish that a person voluntarily obstructed any person so as to prevent that person from proceeding in any direction in which a person has a right to proceed. In the case on hand, as already pointed out, the petitioners had assembled lawfully, taken out Vinayagar Idol procession after taking necessary permission and that there is absolutely no material to show that they have voluntarily obstructed any person. Even assuming that there existed some hindrance for the movement of the general public for some time, as rightly held in **Jeevanandham's case**, that by itself does not constitute an offence of wrongful restraint. Considering the above, this Court has no hesitation to hold that the final report does not make out any offence of the wrongful restraint.

11. The Honourable Supreme Court in **Re-Ramlila Maidan Incident dated.4/5.06.2011 vs Home Secretary, Union of India And Ors** reported in **(2012)5 SCC 1**, has observed that the dharnas and agitations are the basic features of the democratic system and the relevant passage is extract hereunder;

"245. Freedom of speech, right to assemble and demonstrate by holding dharnas and peaceful agitations are the basic features of a democratic system. The people of a democratic country like ours have a right to raise their voice against the decisions and actions of the Government or even to express their resentment over the actions of the Government on any subject of social or national importance. The Government has to respect and, in fact, encourage exercise of such rights. It is the abundant duty of the State to aid the exercise of the right to freedom of speech as understood in its comprehensive sense and not to throttle or frustrate exercise of such rights by exercising its executive or legislative powers and passing orders or taking action in that direction in the name of reasonable restrictions. The preventive steps should be founded on actual and prominent threat endangering public order and tranquility, as it may disturb the social order. This delegate power vested in the State has to be exercised with great caution and free from arbitrariness.

<https://hcservices.courts.gov.in/hcservices/> the ends of the constitutional rights rather



than to subvert them."

12. In the case on hand, even according to the prosecution, the petitioners have not indulged in any act of violence. Considering the above, this Court has no hesitation to hold that the impugned proceedings in S.T.C.No.1238 of 2016, pending on the file of the Judicial Magistrate Court, Aruppukkottai are liable to be quashed.

13. In the result, this Criminal Original Petition is allowed and the impugned proceedings in S.T.C.No.1238 of 2016, pending on the file of the Judicial Magistrate Court, Aruppukkottai, Virudhunagar District as against the petitioners are quashed. Consequently the connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (T&P)

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/ /2022

Sub Assistant Registrar(CS)

SSL

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.

To

1. The Judicial Magistrate Court, Aruppukkottai,
Virudhunagar District.
2. The Inspector of Police,
Town Police Station,
Aruppukkottai,
Virudhunagar District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

CrI.O.P. (MD)No.20938 of 2018
20.01.2022

RK(07/02/2022) 6P 4C