

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 2614 of 2021
and
Crl.M.P. Nos. 1437 and 1438 of 2021

1.Singaravelan @ Singaram

2.Vijayakumar

3.Murugan

4.Gurumurthy

5.Kaja Mohideen

6.Vijay

... Petitioners

Versus

1. State Rep., by
The Inspector of Police,
S-5 Pallavaram Police Station
Chennai – 43.
(Crime No.2025 of 2017)

2. Shanmugam

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the charge sheet filed in C.C. No. 423 of 2019 on the file of the learned Judicial Magistrate No.II, Tambaram and quash the same.

For petitioners : Mr. R.R. Mohanaraja.

For Respondents : Mr. S. Balaji,
Additional Public Prosecutor for R1.

No appearance for R2.

ORDER

This Criminal Original Petition has been filed to quash the charge sheet in C.C. No. 423 of 2019 on the file of the learned Judicial Magistrate No.II, Tambaram.

2.It is alleged in the charge sheet that the petitioners on 12.09.2017 belonging to the political party of TTV Dinakaran stood near Pallavaram Railway Station Sub Way with an intention to cause trouble to the Government, were holding flammable products viz., hoardings against the Government and hence committed the offences under Sections 143, 147, 188, 189, 285, 336 and 353 of the Indian Penal Code.

3.The learned counsel for the petitioners submitted that the petitioners protested peacefully and they have right to do so. The impugned final report even if accepted to be true does not attract any of the offences alleged. The petitioners did not form any unlawful assembly

or obstructed, assaulted or used criminal force on any public servant. There is nothing in the impugned charge sheet to show that the petitioners had committed the offence of wrongful restraint.

4. Per contra, the learned Additional Public Prosecutor appearing for the first respondent, submitted that the petitioners had staged a protest and such protest was conducted without any valid permission. They had obstructed the traffic besides preventing the public servants from discharging their duty. Further, they had violated the orders passed by the Commissioner of Police prohibiting such protest. The learned Additional Public Prosecutor, therefore submitted that the quash petition filed by the petitioners is liable to be dismissed.

5.As regards the offence under Section 143 of the Indian Penal Code, it is seen that the charge sheet does not state as to how the protest by the petitioners attracted the offence of unlawful assembly. A mere protest by a group of people would not amount to unlawful assembly. There is no allegation in the charge sheet for the offence under Section 143 of the Indian Penal Code.

6.As regards the offence under Section 147 of the Indian Penal Code, it is seen that the charge sheet does not state as to how the protest by the petitioners attracted the offence of rioting. There is no allegation in the charge sheet for the offence under Section 147 of the Indian Penal Code.

7.As regards the offence under Section 188 of the Indian Penal Code the first respondent / police has no jurisdiction to lay a final report for the offence under Section 188 of the Indian Penal Code in view of the bar under Section 195 (1)(a)(i) of the Criminal Procedure Code. As per the Section 195 (1)(a)(i) of the Criminal Procedure Code, only a public servant can maintain a complaint and no Court shall take cognizance in the absence of the complaint filed by the said public servant.

8.As regards the offence under Section 189 of the Indian Penal Code, it is seen that the impugned final report does not specify as to which public servant was threatened and as to the nature of the threat. Hence, the offence under Section 189 of the Indian Penal Code is not

made out on the allegations made in the charge sheet.

9.As regards the offence under Section 285 of Indian Penal Code, there is no allegation in the impugned charge sheet to attract the offence under Section 285 of the Indian Penal Code. One cannot infer rashness or negligence to endanger human life, on the part of the petitioners on the basis of the allegations in the impugned charge sheet. Hence, the offence under Section 285 of the Indian Penal Code, is not made out.

10.As regards the offence under Section 336 of the Indian Penal Code, the impugned final report does not specify as to whether the act of the petitioners was done rashly or negligently as to endanger human life for the personal safety of others. There is no material suggesting the commission of the said offence as well.

11.As regards the offence under Section 353 of the Indian Penal Code, this Court finds that there are no allegations in the charge sheet suggesting that the petitioners had obstructed, assaulted or used any criminal force to any public servant or prevented or deterred any public

servant from discharging his public duty. Hence, the offence under Section 353 of the Indian Penal Code also is not made out.

12.For the above reasons, the act of the petitioners in protesting does not attract any of the offences alleged and hence, the C.C. No. 423 of 2019 on the file of the learned Judicial Magistrate No.II, Tambaram is quashed.

13.Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

14.03.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Inspector of Police,
S-5 Pallavaram Police Station
Chennai – 43.
2. The Judicial Magistrate No.II,
Tambaram.

3. The Additional Public Prosecutor,
High Court of Madras,
Chennai.

SUNDER MOHAN, J

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Crl.O.P. No. 2614 of 2019
and
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Crl OP No. 2614 / 2021

Dated: 14.03.2023