



CrI.O.P.No. 24433 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.07.2023

CORAM:

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrI.O.P.No. 24433 of 2021

Surya @ Pushpanathan

...Petitioner

-Vs-

1. State Represented by
The Inspector of Police,
Kottakuppam Police Station,
Villupuram District.

2. Mr.Muthukumaran

... Respondents

Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to call for the records from the first respondent in Crime No.218 of 2021 and to quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.R.Thirumoorthy

For R1 : Mr.A.Damodaran,
Additional Public Prosecutor



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ORDER

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This petition has been filed to call for the records from the first respondent and to quash the first information report for the offence under Section 7(1)(a) of Criminal Law Amendment Act 2005. The allegation is that the petitioner along with other accused, who were armed with wooden logs, were planning to create disturbance in the village and also to attack the police men, if they prevented the accused and others from carrying out their plan. It is further alleged that the respondent apprehended the petitioner while they were hiding behind a bush.

2. The learned counsel for the petitioner submitted that the offence under Section 7(1)(a) of Criminal Law Amendment Act 2005 is not made out in the facts of the instant case. Section 7(1)(a) intends to punish the persons, who intimidate or prevent the employees from carrying on their regular duties and the said provisions was enacted to control the disobedience of the employees and to ensure smooth functioning of the companies. He further submitted that in any case, no act was committed by the petitioner and even according to the allegations made in the first



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information report, they were preparing to commit acts to disturb the law and order in the village and hence, it is not punishable.

3. Per contra, the learned Additional Public Prosecutor for the first respondent submitted that pursuant to the investigation, the first respondent had filed a final report alleging that the petitioner along with other accused had committed the offence under Section 7(1)(a) of Criminal Law Amendment Act 2005. He further submitted that the matter has to be adjudicated only before the trial Court.

4. This Court on perusal of the impugned first information report and the final report filed by the respondent finds that the allegation is that the petitioner along with other accused armed with wooden logs were hiding behind a bush for the purpose of creating disturbance in the village. There is no allegation that the petitioner had committed any overtact to disturb the public peace. Even assuming that the allegation is true, no offence has been committed by the petitioner. It is further seen that the final report alleges that the petitioner has committed the offence under Section 7(1)(a) of Criminal Law Amendment Act 2005. However, there is no penal provisions in the Criminal Law Amendment Act 2005.



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Section 7 only relates to an omission of Section 25 of the Code of Criminal Procedure (Amendment Act 2005). Therefore, this Court is of the view that the final report alleging commission of the offence under Section 7(1)(a) of the Criminal Law Amendment Act 2005 is misconceived. However, this Court finds that there is a penal provision in the Criminal Law (Amendment) Act 1932, which reads as follows:

"7.Molesting a person to prejudice of employment or business (1) whoever -

(a) with intent to cause any person to abstain from doing or to do any act which such person has a right to do or to abstain from doing, obstructs or uses violence to or intimidates such person or any member of his family or person in his employ, or loiters at or near a place where such person or member or employed person resides or works or carries on business or happens to be, or persistently follows him from place to place, or interferes with any property owned or used by him or deprives him of or hinders him in the use thereof, or

(b) loiters or does any similar act at or near the place where a person carries on business, in such a way and with intent that any person may thereby be



deterred from entering or approaching or dealing at such place, shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred rupees, or with both.

(2) No Court shall take cognizance of an offence punishable under this Section except upon a report in writing of facts which constitute such offence made by a police officer not below the rank of officer in charge of a police station."

6. The respondent strangely have not invoked the above penal provision. On the admitted facts, this Court finds that the said penal provision is also not attracted. The allegation is that they were preparing to commit an offence. Under penal law, preparation to commit an offence is not punishable. There are some exceptions to this rule in the penal code and the allegation does not fall under those exceptions. This Court had also quashed the similar proceedings in Crl.O.P(MD)No.2050 of 2022, where the petitioners therein were allegedly preparing to cause disturbance and breach of law and order and the relevant portion of the order reads as follows:

“ 3. According to the prosecution, the petitioner was conspiring to commit an offence.



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Therefore, Section 7(1)(a) of Criminal Law (Amendment) Act, 1932 also will not be applicable. Look at from any angle, the impugned prosecution is not maintainable.”

Therefore, this Court is of the view that the impugned First Information Report and the consequential final report pending trial in C.C.No.12 of 2023 are liable to be quashed and this Criminal Original Petition is allowed.

05.07.2023

Internet: Yes
Index : Yes/No
Speaking/Non Speaking order
vkr

To

1.The Inspector of Police,
Kottakuppam Police Station,
Villupuram District.

2.The Public Prosecutor,
High Court, Madras.



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SUNDER MOHAN, J

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