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Crl OP No. 25175/ 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 25175 of 2019
and

Crl.M.P. No. 13436 of 2019

B.Venkatesh

... Petitioner

Versus

1. The State of Tamil Nadu
Rep., by Inspector of Police,
B-2, R.S.Puram Police Station
Coimbatore.
(Crime No.337 of 2013)

2. The Chief Post officer,
Chief Post Office,
R.S.Puram,
Coimbatore.

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records relating to the C.C. No. 142 of 2013, pending on the file of the learned Judicial Magistrate – I, Coimbatore and quash the same.

For Petitioner : Mr. R. Vivekananthan.

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



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No appearance for R2.

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ORDER

This Criminal Original Petition is to quash the C.C. No. 142 of 2013 on the file of learned Judicial Magistrate – I, Coimbatore.

2.It is alleged in the charge sheet that the petitioner on 11.03.2013 along with 32 others belonging to Naam Tamilar Katchi Students Wing assembled with common intention to lock the main gate of R.S.Puram Head Post Office and raised slogans against the Government and hence committed the offences under Sections 143, 188, 342, 353 & 506 (ii) read with 34 of the Indian Penal Code.

3.The learned counsel for the petitioner submitted that the petitioner protested peacefully and he has a right to do so. The impugned final report even if accepted to be true does not attract any of the offences alleged. The petitioner 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 petitioner had committed the offence of wrongful restraint.

4. Per contra, the learned Additional Public Prosecutor appearing



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for the first respondent, submitted that the petitioner and 32 others 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, Chennai City, prohibiting such protest. The learned Additional Public Prosecutor, therefore submitted that the quash petition filed by the petitioner 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 petitioner 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 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



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servant can maintain a complaint and no Court shall take cognizance in the absence of the complaint filed by the said public servant.

7.As regards the offence under Section 342 I.P.C., this Court in similar circumstances held in *Jeevanandham and others vs. State* reported in **2018 SCC online Mad 13698 : (2018) 2 LW (Cri) 606** that merely because an hindrance is caused to the movement of general public for sometime due to a protest, the said act would not attract an offence of wrongful confinement. Hence, the offence under Section 342 of the Indian Penal Code, is not made out.

8.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 petitioner 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.

9.As regards the Section 506 (ii) of the Indian Penal Code, there is no allegation as against the present petitioner that he had threatened any persons.



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11. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

08.03.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Inspector of Police,
B-2, R.S.Puram Police Station
Coimbatore.
2. The Judicial Magistrate No.I,
Coimbatore.
3. The Additional Public Prosecutor,
High Court of Madras,
Chennai.



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4. The Chief Post officer,
Chief Post Office,
R.S.Puram,
Coimbatore.



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SUNDER MOHAN, J

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