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Crl.O.P.No.22464 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.10.2023

Pronounced on : 10.10.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.O.P.No.22464 of 2023

and

Crl.M.P.Nos.15663 and 15664 of 2023

1.S.Raju(M/52)
(shown as Raji in the FIR and Final Reort)

2.Venkatesan

3.Veerappan

4.Ganesan

5.Senthil Kumar

6.Sivakumar

7.Senthil

8.Pushpadevan

9.Balu Mahendhiran

10.Senguttuvan

11.Mathiazhagan

..Petitioners/Accused Nos.1,2,4 to 12

/versus

1.State By:

The Inspector of Police,
Srimushnam Police Station,
Cuddalore District.
(Cr.No.255 of 2017)

.. Respondent/Complainant

2.R.Saravanan

S/o Ramalingam

Assistant Engineer



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Mining and Monitoring Division
PWD-Water Resources Department,
Virudhachalam,
Cuddalore District.

.. Respondent/Defacto Complainant

Criminal Original Petition has been filed under Section 482 of Cr.PC., to call for the entire records connected with the case in C.C.No.129 of 2018, on the file of the learned Judicial Magistrate No.II, Virudhachalam and quash the same.

For Petitioners :Mr.S.Sathiachandran

For Respondent :Mr.S.Udaya Kumar
Govt.Advocate (Crl.Side) for R1

ORDER

On 26/08/2017 the first respondent police registered FIR at about 13.00 hours, based on the complaint from the second respondent reporting that members of Makkal Athigaram Party at about 11.00 hrs gathered unlawfully near the Government sand quarry and raised slogans against illicit mining of sand. They tried to prevent the Government servants from discharging their duty. They tried to put a shamina for shade and organise protest despite Section 30(2) of the District Police Act in force and put to notice to the protestors.

2. The FIR against 12 named persons and unknown villagers taken up for investigation and final report filed before the Judicial Magistrate II,



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Viruthachalam, Cuddalore District, against 12 persons for offences under Sections 447, 143, 188 and 353 of IPC. The said final report taken on file and assigned C.C.No:129/2018.

3. While so, one of the accused by name Asaithambi (A-3), filed Crl.O.P.No:33053/2019 under Section 482 of Cr.PC to quash C.C.129/2018 on the file of Judicial Magistrate-II, Viruthachalam, Cuddalore on the ground that to take cognizance of offence under Section 188 IPC, the final report even if taken as true, it does not constitute offences mentioned in the final report. It was a peaceful protest and no criminal trespass alleged. No material in the final report to indicate that the public servants were illegally prevented from discharging their duty. As far as offence under Section 188 of IPC, there is bar to take cognizance under Section 195(1)(a)(i) of Cr.P.C., which envisage 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.

4. A learned Judge of co-ordinate strength by his order dated 10/03/2023 had allowed the petition holding that Section 353 IPC is not made out. There is no allegation in the charge sheet for the offence under Section 143



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IPC. The Court has taken cognizance of offence under Section 188 IPC despite bar under Section 195(1)(a)(i) of Cr.P.C. Whereas, the charge under Section 447 IPC is misconceived.

5. The learned counsel appearing for the petitioners submitted that the case against co-accused is quashed and therefore, on parity, the petition filed by the other accused ought to be allowed on parity.

6. In view of this Court, obviously this is a case of gathering by more than 5 persons without permission to protest illegal mining. Therefore, the reasoning found in the order passed in Crl.O.P.No.33053/2019, dated 10/03/2023 is both legally and factually incorrect. It is not in tune with the guidelines laid by Hon'ble Supreme Court in *M/s Neeharika Infrastructure – vs- State of Maharashtra reported in [AIR 2021 SC 1918]*. The informant in this case is a public servant in charge of the quarry. Apart from Section 188 IPC, there are other offences under IPC is also found *prima facie*. The rough sketch enclosed along with the final report indicates that the SOC is inside the quarry operating area which is not a place with unrestricted access to general public. Therefore, this Court verified with the learned Government Advocate,



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whether the State has preferred any appeal against the order dated 10/03/2023, which has quashed the case against co-accused for the same set of facts. The Learned Government Advocate answered in negative. In the said facts and circumstances, since the State has allowed the order of quash against one accused to stay and not taken up the matter further, hence, the principle of parity and judicial discipline requires to be applied.

7. In the result, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are closed.

10.10.2023

Index:yes/no

Speaking order/non speaking order

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To:

- 1.The Judicial Magistrate No.II, Virudhachalam.
- 2.The Inspector of Police, Srimushnam Police Station,Cuddalore District.
- 3.The Public Prosecutor, High Court, Madras.



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Dr.G.JAYACHANDRAN, J.

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