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Crl OP No. 33053 / 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.03.2023

CORAM :

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

Criminal Original Petition No. 33053 of 2019
and
Crl.M.P. Nos. 18222 and 18223 of 2019

K.Asaithambi

... Petitioner

Versus

1. State rep., by
The Sub Inspector of Police,
Srimushnam Police Station
Cuddalore District.
(Crime No.255 of 2017)

2. Mr. R. Saravanan

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records pertaining to the charge sheet in C.C. No. 129 of 2018 on the file of the learned Judicial Magistrate – II, Virudhachalam, Cuddalore District in Crime No.255 of 2017 on the file of the first respondent and quash the same.

For Petitioner : Mr. A. Suresh Sakthi Murugan.

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



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R2 – Notice served.

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ORDER

This Criminal Original Petition is to quash the charge sheet in C.C. No. 129 of 2018 on the file of the learned Judicial Magistrate – II, Virudhachalam, Cuddalore District in Crime No.255 of 2017

2.It is alleged in the charge sheet that on 26.08.2017 the petitioner and thirteen accused persons along with the people of ten villages assembled at the Government Sand Quarry and raised slogans against the Sand Quarry and the Government and hence committed the offences under Sections 143, 188, 353 and 447 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.



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4. Per contra, the learned Additional Public Prosecutor appearing for the respondent, submitted that the petitioner along with thirteen accused persons 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 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 188 of the Indian Penal Code the first respondent / police has no jurisdiction to lay a final report



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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.

6.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 is not made out.

7.As regards the offence under Section 447 I.P.C, there is no allegation in the impugned charge sheet to satisfy the ingredients of the offence of criminal trespass. Hence, the charge under Section 447 I.P.C., is misconceived.

8.Further, this Court in similar circumstances held that in ***Jeevanandham and others vs. State*** reported in ***2018 SCC online Mad***



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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 the alleged offences.

9. For the above reasons, the act of the petitioner in protesting does not attract any of the offences alleged and hence, the charge sheet in C.C. No. 129 of 2018 on the file of the learned Judicial Magistrate – II, Virudhachalam, Cuddalore District in Crime No.255 of 2017 is quashed.

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

10.03.2023

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Index: Yes/No

Speaking Order / Non-Speaking Order

Neutral Citation: Yes / No

To

1. The Sub Inspector of Police,
Srimushnam Police Station
Cuddalore District.



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2. The Judicial Magistrate No.II,
Virudhachalam,
Cuddalore District.

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

SUNDER MOHAN, J

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