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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 30/06/2023

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The Hon'ble Mr.Justice **G.ILANGO VAN**

Cr1.OP(MD)No.2007 of 2023
and
Cr1.MP(MD)No.1751 of 2023

Dhanasekaran : Petitioner/A12

Vs.

1.State represented by
The Inspector of Police,
Tallakulam Police Station,
Madurai City.
(In Crime No.292 of 2018) : R1/Complainant

2.Mr.Azhagumuthu,
Sub Inspector of Police,
Tallakulam Police Station,
Madurai City. : R2/De-facto Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to the Final Report in CC No.919 of 2020 on the file of the Judicial Magistrate No.II, Madurai and quash the same as illegal so far as the petitioner is concerned and pass such further or other orders.

For Petitioner : Mr.A.Naresh Prabhu

For Respondents : Mr.S.Manikandan
Government Advocate
(Criminal side)

**ORDER**

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This criminal original petition has been filed seeking quashment of the case in CC No.919 of 2020 on the file of the Judicial Magistrate No.II, Madurai.

2.The case of the prosecution in brief:-

On 17/02/2018 at about 10.30 am, near Tallakulam BSNL office, the accused persons gathered unlawfully, made protest/demonstration, demanding the release of water from the Cauvery Dam. They tried to enter into the BSNL office. They also made verbal quarrel with the police team. On the basis of the above said occurrence, a case in Crime No.292 of 2018 was registered for the offences under sections 143, 188, 353 IPC and section 7(1)(a) of Criminal Law Amendment Act, 2005. After completing the formalities of investigation, charge sheet was filed and it was taken cognizance in CC No.919 of 2020 by the Judicial Magistrate No.II, Madurai.

3. Seeking quashment of the same, this petition has been filed by the petitioner on the ground that none of the allegations mentioned, either in the FIR or charge



sheet attract any of the ingredients of the offences alleged against him.

4. Heard both sides.

5. It is a case of demonstration demanding release of water from the Cauvery Dam and for establishment of Cauvery Water Management Authority. It is not the case of the prosecution that they have caused any damage to the public property. It is seen that a peaceful demonstration was conducted by the political party.

6. For attracting the offence under section 143 IPC, the ingredients of section 141 IPC must be fulfilled.

7. Section 141 IPC reads as under:-

"Section 141. Unlawful assembly. -

An assembly of five or more persons is designated an "unlawful assembly:, if the common object of the persons composing that assembly is-



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First-To overawe by criminal force, or show of criminal force, or any public servant in the exercise of the lawful power of such public servant; or

Second-To resist the execution of any law, or of any legal process; or

Third.-To commit any mischief or criminal trespass, or other offence; or

Fourth.-By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right: or

Fifth.-By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.

Explanation.-An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly."



8. When we apply the ingredients to the factual position of the case, it is seen that none of the ingredients mentioned in 141 IPC get attracted. They have simply made protest against the Central Government to set up the Cauvery Management Board. It is a democratic right of every person to raise voice against the political or Government demanding legal action as a point. Such a right has been exercised by the petitioner along with others. So, that cannot be construed as 'unlawful or illegal'.

9. Section 188 IPC reads as under:-

"188. Disobedience to order duly promulgated by public servant.-Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such directions, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with



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simple imprisonment for a term which may extent to one month, or with fine which may extend to two handed rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extent to one thousand rupees, or with both.

Explanation.-It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

10. Section 195 CrI.P.C is a bar for the police to register the FIR and investigate the matter in respect of section 188 of IPC and file a report under section 173 of Cr.P.C. Section 195 of Cr.P.C stipulates that no court shall take cognizance of any of the offences under sections 172 to 188 (both inclusive) of the IPC, except



on the complaint in writing with the public servant concerned or some of the public servant to whom administrative support.

11.No doubt that they are causing some sort of inconvenience to the public. For that, they ought to have proceeded under Madras City Police Act. But instead of doing so, they have been charged for the offences under sections 143 and 188 IPC, which is not permissible under law.

12.So far the offence under section 353 IPC is concerned, it has been stated that the police people were prevented from discharging their official duty.

13.Section 353 IPC reads as follows:-

"353. Assault or criminal force to deter public servant from discharge of his duty.—Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with



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intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

14. '**Criminal force**' is defined in 350 IPC, which read as under:-

'350.Criminal force-Whoever intentionally uses force to any person, without that persons's consent, in order to the committing of any offence, or intending by the use of such force to cause, or knowing it to be likely that by the use of such fore he will cause injury, fear or annoyance to the person to whom the force is used is said to use criminal force to



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that other.

15. '**Assault**' is defined in section 351, which reads as under:-

'351. Assault-Whoever makes any gesture, or any preparation intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he who makes that gesture or preparation is about to use criminal force to that person, is said to commit an assault.

Explanation-Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparation such a meaning as may make those gestures or preparation amount to an assault.

16. When we read the ingredients of the offences under sections 350 and 351 IPC coupled with 353 IPC, there is no clear indication in the final report that



criminal force or assault was made by the accused persons to prevent the public servants from discharging their official duty.

17. Reading of the final report shows that a police team entered into the place of occurrence and warned the accused to disburse, but they failed. That will not amount to use of criminal force or assault upon the public servants, preventing them from discharging their official duty. On the face of it, section 353 IPC is not made out.

18. So far as the Criminal Law Amendment Act, 2005 is concerned, the intention of the petitioner was not to cause any nuisance or preventing the BSNL officials from discharging their duty. Here, their intention was to draw the attention of the Government over the above said public issue. So in the facts and circumstances of the case, the offence under section 7(1)(a) of the Criminal Law Amendment Act, 2005 is not attracted. As mentioned above, their aim is not to prevent either the BSNL officials or the public servants from discharging their official duty. On the face of it, the Criminal Law Amendment Act, 2005 is also not attracted.



19. For all the reasons stated above, this court is of considered view that the entire prosecution is bad in law and accordingly, this petition is liable to be allowed.

20. In the result, this criminal original petition is **allowed**. The case in CC No.919 of 2020 on the file of the Judicial Magistrate No.II, Madurai is hereby quashed as against the petitioner. Consequently, connected Miscellaneous Petition is closed.

30/06/2023

Index:Yes/No
Internet:Yes/No

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To,

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- 1.The Judicial Magistrate No.II,
Madurai.
- 2.The Inspector of Police,
Tallakulam Police Station,
Madurai City.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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