



1

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 14/06/2023

CORAM

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

Cr1.OP(MD)No.5045 of 2023

and

Cr1.MP(MD)Nos.4467 and 4468 of 2023

1.Mohamed
2.Alagarsamy
3.Haji Mohamed : Petitioners/A2, A6 and A7

Vs.

State represented by
Sub Inspector of Police,
Thiruvidadaimarudur Police Station,
Thanjavur,
Tamil Nadu-612 103 : R1/Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in STC No.344 of 2021 on the file of the Judicial Magistrate No.1, Kumbakonam and quash the same as against the petitioners and pass any other orders

For Petitioners : Mr.A.Raja Mohamed

For Respondent : Mr.R.Suresh Kumar
Government Advocate
(Criminal side)



WEB COPY



ORDER

This criminal original petition has been filed seeking quashment of the case in STC No.344 of 2021 on the file of the Judicial Magistrate No.1, Kumbakonam.

2.The case of the prosecution in brief:-

On 05/04/2018, the petitioners and others assembled before the Thirubuvanam BSNL office and staged protest for setting up the Cauvery Management Board, against the Central Government, without any proper permission from the concerned authorities. Upon which, a case in Crime No.64 of 2018 was registered for the offences under sections 143, 188 and 341 IPC. After completing the formalities of investigation, charge sheet was filed and it was taken cognizance in STC No.344 of 2021 by the Judicial Magistrate No.1, Kumbakonam, Thanjavur.

3. Seeking quashment of the same, this petition has been filed by the petitioners 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 them.



WEB COPY



3

4. Heard both sides.

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

6. 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-

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



WEB COPY



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."

7. 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 petitioners. So, that cannot be construed as 'unlawful or illegal'.



WEB COPY



8. Section 341 IPC reads as under:-

"341. Punishment for wrongful restrain.-Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees or with both.

9. Similarly, section 341 is not attracted. There is no allegation to the effect that they prevented the public from proceeding in a particular way.

10. 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



WEB COPY



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.

11. 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.

12.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, 341 ad 188 IPC, which is not permissible under law. On that sole ground, the entire prosecution is bad in law.

13.In the result, this criminal original petition is **allowed**. The case in STC No.344 of 2021 on the file of the Judicial Magistrate No.1, Kumbakonam, Thanjavur district is hereby quashed as against the petitioners. Consequently, connected Miscellaneous Petitions are closed.

14/06/2023

Index:Yes/No
Internet:Yes/No

er



WEB COPY To,

- 1.The Judicial Magistrate No.1,
Kumbakonam,
Thanjavur District.
- 2.The Sub Inspector of Police,
Thiruvidaimarudhur Police Station,
Thanjavur.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



9

G.ILANGOVA, J

er

Cr1.OP(MD)No.5045 of 2023

14/06/2023