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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 16/03/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Cr1.OP(MD)No.4625 of 2023

and

Cr1.MP(MD)No.4338 of 2023

G.Pandurangan : Petitioner/A1
Vs.

1.State rep. by
The Inspector of Police,
Virudhu Nagar West Police Station,
Virudhu Nagar-District.
(Crime No.45 of 2021). : R1/Complainant

2.S.Devaseervatham,
Regional Deputy Development Officer,
Virudhunagar Panchayat Union,
Virudhunagar District. : R2/De-facto Complainant

Prayer:Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the entire records in Crime No.45 of 2021, dated 14/03/2021 pending on the file of the 1st respondent and quash the same as illegal and pass such further or other orders.

For Petitioner : Mr.R.Santhanam

For Respondents : Mr.B.Nambiselvan
Additional Public Prosecutor

**ORDER**

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This criminal original petition is filed seeking quashment of the FIR in Crime No.45 of 2021 on the file of the 1st respondent.

2.The case of the prosecution in brief:-

The de-facto complainant was working as Regional Deputy Development Officer, Virudhu Nagar Panchayat Union, and also in-charge of the Flying Squad for controlling the illegalities on the eve of the assembly election. Along with a team of police persons, on 14/03/2021 at about 05.00 pm, they were on routine vehicle check up. At that time, they received the information that the members of a political party put up the flex board in a public place, causing disturbance to the public and they were also flying their party symbol in the vehicle without proper permission and they also started procession in violation of the regulations issued by the District Administration. Over the above said occurrence, a case in Crime No.45 of 2021 was registered for the offences under sections 143, 188, 286 IPC and sections 4AA(1a) and 4AAA(4) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959.



3. Seeking quashment of the same, this petition has been filed by this petitioner, who is arrayed as A1.

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



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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."

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 peaceful procession. Right has been exercised by the petitioner alongwith others. So, that cannot be construed as 'unlawful or illegal'.



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8. Section 286 IPC reads as under:-

"286. Negligent conduct with respect to explosive substance-Whoever does, with any explosive substance, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other persons, or knowingly or negligently omits to take such order with any explosive substance in his possession as is sufficient to guard against any probable danger to human life from that substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to once thousand rupees, or with both

9. Similarly, for attracting the offence under section 286 IPC, there must be material to show that some was negligent in using the explosive substances. But there was no mentioning in the complaint with regard to the negligent using of explosive substances.

10. Section 188 IPC reads as under:-

"188. Disobedience to order duly promulgated by public servant.-Whoever,



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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 simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred 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 extend 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



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order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

11. Section 195 Crl.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, 286 and 188 IPC, which is not permissible under law.

13. For the offence under sections 4AA(1a) and 4AA(4) of the Tamil Nadu Open Places (Prevention of



Disfigurement) Act 1959, the maximum punishment prescribed is one year or with fine, which may extend to five thousand rupees or with both. The offence said to have taken place, on 14/03/2021. But even after the period of limitation, final report has not been filed. So, without going into the other aspects, on that sole ground, this petition is liable to be allowed.

14. In the result, this criminal original petition stands **allowed**. The FIR in Crime No.45 of 2021 on the file of the 1st respondent is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

16/03/2023

Index: Yes/No
Internet: Yes/No
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To,

1. The Inspector of Police,
Virudhu Nagar West Police Station,
Virudhu Nagar.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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