



CrI.O.P.(MD)No.5368 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12/06/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGOVA**

CrI.OP(MD)No.5368 of 2023

and

CrI.MP(MD)No.4744 of 2023

1.Mohamed Yusuf @ MSM Mohamed Yusub
2.Mohamed Thameem @ MA Mohamed Thamim
3.Hajashareef @ AH Haja Sherif
4.Ahamed Aslam
5.Mohamed Salihu
6.Navas Ahamed
7.Umarthambi
8.Mohamed Azarudden @ Asarudeen
9.Z.Mohamedthambi
10.Faisal Ahemed
11.N.Mohamed Buhari
12.Shaik Abdulla @ Mohamed Sheik
13.Pitchai
14.Mohamed Thammem
15.A.Mohamed Mahir
16.Kisar Mohamed @ Kisar Ahamed : Petitioners/
A1 to A6, A11, A12,
A13, A16, A19, A20,
A22, A26,A27 & A31

Vs.

1.State rep. by
The Inspector of Police,
Athiramapattinam Police Station,
Thanjavur District.
(Crime No.78 of 2022) : R1/Complainant
2.Annadurai : 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 case registered in First Information in Crime No.78 of 2022 on the file of the 1st respondent and quash the same as illegal and pass such other orders.



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For Petitioners : Mr.J.Lawrance

For Respondents : Mr.B.Nambiselvan
Additional Public Prosecutor

O R D E R

This criminal original petition has been filed seeking quashment of the FIR in Crime No.78 of 2022 on the file of the 1st respondent.

2.The case of the prosecution in brief:-

On 19/01/2022 at about 03.15 pm, when the de-facto complainant party were on routine patrolling duty, the accused persons were found assembled near the place of occurrence, demanding to rectify the mistake occurred during delimitation of wards of Adhirampattinam Municipality and conducted protest violating Government Order with regard to protocol of Covid-19 and causing inconvenience to the public and traffic. Based upon which, a case in Crime No.78 of 2021 was registered for the offences under sections 143, 188, 269, 270 IPC and section 3 of Epidemic Disease Act, 1897 and section 51(b) of the Disaster Management Act, 2005.



3. Seeking quashment of the same, this petition has been filed by the petitioners on the ground that none of the allegations mentioned in the FIR attract any of the ingredients of the offences alleged against them.

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 agitation. It is a democratic right of every person to raise voice against the political or Government demanding legal action on a point. Such a right has been exercised by the petitioners. So, that cannot be construed as 'unlawful or illegal'.



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8. 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 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.



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It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

9. 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.

10. As per section 269 IPC, maximum punishment period is six months or fine or both. But section 270 IPC upto two years or with fine or with both. There is no question of limitation here. But it is also seen that the Government has taken policy decision to withdraw the cases registered against the public for pandemic violation.

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



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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.

12.For the reasons stated above, this criminal original petition stands allowed. The impugned FIR in Crime No.78 of 2022 is hereby quashed as against the petitioners. Consequently, connected Miscellaneous Petition is closed.

12/06/2023

Index:Yes/No
Internet:Yes/No

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To,

- 1.The Inspector of Police,
Athiramapattinam Police Station,
Thanjavur.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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CrI.OP (MD) No.11763 of 2023

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