



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 28/04/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.OP(MD)No.8310 of 2023

and

Crl.MP(MD)Nos.7229 and 7231 of 2023

1.Gurusamy
2.Sathees
3.Pandi
4.Prakash
5.Ramalingam
6.Sekar
7.Veeran

: Petitioners/ A1, A6, A10, A13,A15, A20 and A21

Vs.

1.State represented by
The Inspector of Police,
South Gate Police Station,
Madurai City.
(In Crime No.972 of 2016)

: R1/Complainant

2.Mr.Raja Murali,
Sub Inspector of Police,
South Gate 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 STC No.1097 of 2017 on the file of the Judicial Magistrate No.IV, Madurai District and quash the same as illegal so far as the petitioners are concerned and pass such further or other orders.

For Petitioners : Mr.N.Sekar

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

O R D E R

This criminal original petition is filed seeking quashment of the case in STC No.1097 of 2017 on the file of the Judicial Magistrate No.IV, Madurai.



2. The case of the prosecution in brief:-

On 11/11/2021 at about 11.20 am near Vadamalaiyan Hospital, Madurai, about 21 persons, who are the members of one Association called 'Makkal Athigaram' assembled unlawfully and made protest raising voice against the Prime Minister of India. Nothing that it causes inconvenience to the traffic and public, they warned to disburse, but they failed. On the basis of the above said occurrence, a case in Crime No.972 of 2016 was registered for the offences under sections 143, 188 and 341 IPC. After completing the formalities of investigation, final report was filed and it was taken cognizance in STC No.1097 of 2017 by the Judicial Magistrate No.IV, Madurai.

3. Seeking quashment of the same, this petition has been filed on the ground that none of the allegations mentioned in the FIR attract any of the ingredients mentioned in the final report.

4. Heard both sides.

5. The learned counsel appearing for the petitioners would straightway rely the judgment of the this court in the case of **Jeevanantham Vs. State [2018(2)L.W (Crl.) 606]**, wherein it has been held that police has no power to register the case under section 188 IPC and they ought to have obtained prior permission from the concerned jurisdictional Magistrate before registering FIR and investigate the matter. So on that account, he would submit that the prosecution itself is improper and illegal.

6. Per contra, the learned Government Advocate (Criminal side) would submit that except the offence of 188 IPC, sections 143 and 341 IPC are also mentioned in the final report. But reading of the final report does not indicate the ingredients of sections 143 and 341 IPC.

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

8. 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

WEB COPY

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."

9. When we apply the ingredients to the factual position of the case, it is seen that any of the ingredients mentioned in 141 IPC are not attracting. They have simply made protest against the performance of the Prime Minister of India. It is a democratic right of every person to raise voice against the political or Government condemning their policies. Such a right has been exercised by the petitioners. So, that cannot be construed as 'unlawful or illegal'.

10. 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.

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

12. 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



WEB COPY

Crl.OP(MD)



23

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

13. Section 195 Cr.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.

14. 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 and 188 IPC, which is not permissible under law. On that sole ground, the entire prosecution is bad in law.

15. In the result, this criminal original petition is **allowed**. The case in STC No.1097 of 2017 on the file of the Judicial Magistrate No.IV, Madurai is hereby quashed as against the petitioners. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(AD II)

// True Copy //

/07/2023

Sub Assistant Registrar(CS)



Er

To,

1.The Judicial Magistrate No.IV,
Madurai.

2.The Inspector of Police,
South Gate Police Station,
Madurai City,
Madurai.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.OP(MD)No.8310 of 2023

28.04.2023

MK/11.07.2023 5P 4C