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Crl.O.P.(MD)No.13798 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	02.08.2023
Delivered on	26.09.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.13798 of 2023

K.Naina Mohamed

... Petitioner/Accused No.6

Vs.

1. The Inspector of Police,
Mimisal Police Station,
Pudukottai District.
(Crime No.204 of 2020)

... Respondent/Complainant

2.Mr.T.Ayyappan

... Respondent/
Defacto Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records of impugned charge sheet in STC No.533 of 2022 on the file of the learned Judicial Magistrate Court, Aranthangi and quash the same as illegal as against the petitioner.

For Petitioner : Mr.A.mohamed Riyaz

For Respondents : Mr.SS.Madhavan
Government Advocate (Crl. Side)



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Crl.O.P.(MD)No.13798 of 2023

ORDER

This petition is filed seeking quashment of the charge sheet in STC No.533 of 2022 on the file of the learned Judicial Magistrate Court, Aranthangi against the petitioner.

2. According to the prosecution on 28.05.2020 at about 21:15 hours when the Sub-Inspector of Police along with constable of Mimisal Police Station were engaged in patrol duty at Mimisal Bus Stop. The petitioners and other five persons were assembled opposite to Mimisal Sivan Temple for protesting for not functioning of BSNL Tower Network more than two years thereby not following the Covid-19 protocols. Therefore, a case has been registered *suo motu* against the petitioner under Sections 143, 269, 271, 283 of IPC r/w. Section 51(b) of Disaster Management Act, 2005.

3. Learned counsel for the petitioner submits that the police have completed the investigation on the very same day and filed charge sheet without investigating the case properly and same was taken on file in



CrI.O.P.(MD)No.13798 of 2023

STC No.533 of 2022. The petitioners have got a right to agitate peacefully as guaranteed under the Constitution thereby case should not have been filed.

4. Section 143 of IPC runs as under:-

"Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

Section 143 of I.P.C speaks about the punishment for being member of an unlawful assembly. Insofar as Section 143 of IPC is concerned, the prosecution is expected to prove that the petitioner and other accused have assembled unlawfully in order to commit offence as mentioned in I to V of Section 141 of IPC. In respect of this offence also, the only allegation made by the prosecution is that the accused persons without taking any permission from the authority have started protesting and that being a member of an assembly of more than five persons, is no offence, unless such assembly is to commit any of the offences mentioned under 141 of I.P.C. It is not the case of the prosecution that the intention of the petitioner and other persons is to commit any one of



Crl.O.P.(MD)No.13798 of 2023

the offences as formulated under Section 141 of I.P.C. Thereby there is no material to show that the petitioner has committed the offences under Sections 143 of I.P.C.

5. Section 269 of I.P.C runs as under:-

“Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.”

Above provision speaks that if a person does any act which he knows that his act likely to spread the infection of any disease endangers to life can be punished with imprisonment, which may extend to six months or with fine or both. The only allegation of the prosecution is that they were protesting in violation of the Covid-19 protocols. In order to prove offence under Section 269 of IPC, the prosecution is expected to prove that on account of negligent act of the petitioners who knowing fully that their act of negligence will spread Covid-19 pandemic disease to others. In fact, as seen from the prosecution version, there is no allegation levelled against the petitioners that on account of negligent act of the



Crl.O.P.(MD)No.13798 of 2023

petitioners, there was a possibility of spreading of Covid-19 disease further. Further even if the petitioners were negligent, the prosecution is expected to prove that the petitioners were infected with Covid-19 disease and due to their negligence by not wearing mask and other precautionary measures, Covid-19 may likely to spread further. Therefore, when there is no record before the Court that all the petitioners were infected with Covid-19 disease, when there is no allegation that the petitioners were negligent and owing to their action of negligence, there was a possibility of spreading Covid-19 disease, charge under Section 269 of IPC will not attract and therefore, the charge sheet is liable to be quashed.

6. Section 271 of IPC runs as under:-

"Whoever knowingly disobeys any rule made and promulgated [by the Government] for putting any vessel into a state of quarantine, or for regulating the intercourse of vessels in a state of quarantine with the shore or with other vessels, for regulating the intercourse between places where an infectious disease prevails and other places, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."



Crl.O.P.(MD)No.13798 of 2023

In order to prove the offence under Section 271 of IPC as referred above, the prosecution is expected to place where the petitioner and others have allegedly staged dharna for protesting non functioning of BSNL Tower Network as the place is under "Quarantine". Once the place has been declared as Quarantine and knowing fully well that the place is quarantined and if the petitioners are staging dharna without following the quarantine rules, then it will be attracted the offence under Section 271 of IPC. However, there is no record before this Court to show that the petitioners and others have protested in the quarantined place. Once the place is not quarantined the offence under Section 271 of IPC does not apply.

7. Section 283 of IPC runs as under:-

"Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished, with fine which may extend to two hundred rupees. "

On going through the above provision, it is clear that the police have inappropriately mentioned this section which does not suit the facts



Crl.O.P.(MD)No.13798 of 2023

of the case. In order to charge a person for the offence under Section 283 of IPC, the accused must be in possession or incharge of the property and being incharge of the property, he must obstruct any person in any public way or public land of navigation, then he can be punished with a fine which may extended up to Rs.200/-. The case of the prosecution is that they were demonstrating near Mimisal Sivan Temple in protest for not functioning of BSNL Tower Network. The place where the petitioner and others were staging dharna is a public place and it does not belong to petitioner or when the petitioner is not incharge of that place, Section 283 of IPC is not applicable. Therefore, considering from any angle, charge sheet filed against the petitioner will not sustain and therefore, required to be quashed.

8. In the result, this petition is allowed and the charge sheet in STC No.533 of 2022 on the file of the learned Judicial Magistrate Court, Aranthangi, is quashed.

26.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PKN



Crl.O.P.(MD)No.13798 of 2023

To

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1. The Inspector of Police,
Mimisal Police Station,
Pudukottai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD)No.13798 of 2023

DR.D.NAGARJUN,J

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Crl.O.P.(MD)No.13798 of 2023

Dated: 26.09.2023