



Crl.O.P.(MD)No.11576 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 27/06/2023

CORAM

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

Crl.OP(MD)No.11576 of 2023

and

Crl.MP(MD)No.9113 of 2023

1.Vellai Sheik @ Sheik Fareed
2.Yasar Arafad @ Yasar Arafath : Petitioners/A30 and A31

Vs.

1.State through
The Inspector of Police,
Town North Police Station,
Dindigul District.
(Crime No.557 of 2017) : R1/Complainant

2.K.Azhagu Raj,
Sub Inspector of Police,
Town North Police Station,
Dindigul District. : R2/De-facto Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in STC No.664 of 2019 on the file of the Judicial Magistrate No.1, Dindigul and to quash the same in so far as the petitioners are concerned.

For Petitioners : Mr.S.M.A.Jinnah

For Respondents : Mr.B.Nambiselvan
Additional Public Prosecutor



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O R D E R

WEB COPY This criminal original petition has been filed seeking quashment of the case in STC No.664 of 2019 on the file of the Judicial Magistrate No.1, Dindigul.

2.The case of the prosecution in brief:-

On 27/07/2017 at about 04.30 pm, the members of a political party under the head of their Leader, numbering about 31 assembled unlawfully near Periyar statue, caused disturbance to the traffic and demanded exemption of Tamil Nadu from NEET. On the basis of the above said occurrence, a case in Crime No.557 of 2017 was registered for the offences under sections 145, 188 and 341 IPC. After completing the investigation, charge sheet was filed and it was taken cognizance in STC No.664 of 2019 by the Judicial Magistrate No.1, Dindigul.

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

4.Heard both sides.



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5.For attracting the offence under section 145 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 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



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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 applied the ingredients to the factual position of the case, it is seen that none of the ingredients mentioned in section 141 IPC get attracted. They have simply made agitation seeking exemption for Tamil Nadu Students from participating NEET Examination. It is a democratic right of every person to raise voice against the political or Government demanding legal action. Such a right has been exercised by the petitioners. So, that act cannot be construed as 'unlawful or illegal'.

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."



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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 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.



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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 Cr.P.C is bar to the police to register the FIR and to investigate the matter and file a final report under section 173 Cr.P.C, in respect of matters under section 188 of IPC. 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 by subordinate.

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 145, 341 ad 188 IPC, which is bad under law.



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13.In the result, this criminal original petition is **allowed**. The case in STC No.664 of 2019 on the file of the Judicial Magistrate No.1, Dindigul is hereby quashed as against the petitioners. Consequently, connected Miscellaneous Petition is closed.

27/06/2023

Index:Yes/No
Internet:Yes/No

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To,

- 1.The Judicial Magistrate No.1,
Dindigul.
- 2.The Inspector of Police,
Town North Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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