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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 21/06/2023

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The Hon'ble Mr.Justice **G.ILANGO VAN**

Cr1.OP(MD)No.10925 of 2023
and
Cr1.MP(MD)Nos.8714 and 8715 of 2023

S.Velmurugan : Petitioner/A25

Vs.

1.The Inspector of Police,
Town West Police Station,
Dindigul District.
(Crime No.69 of 2017) : R1/Complainant

2.D.Suresh,
The Inspector of Police,
Town West 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 pertaining to CC No.53 of 2017 on the file of the Judicial Magistrate No.1, Dindigul and quash the same in so far as the petitioner/A25 is concerned and pass such other orders.

For Petitioner : Mr.J.Vishnu

For Respondents : Mr.B.Nambiselvan
Additional Public Prosecutor



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ORDER

This criminal original petition has been filed seeking quashment of the case in CC No.53 of 2017 on the file of the Judicial Magistrate No.1, Dindigul.

2.The case of the prosecution in brief:-

On 18/04/2017 at about 12.15 noon on the Dindigul R.M.Colony Main road, near KVB Bank, about 31 person under the head of Al-Bose gathered unlawfully, standing in the middle of the road, causing disturbance to the traffic and the public movement, demanding complete enforcement of prohibition. They were asked to disperse, but failed. On that account, a case in Crime No.69 of 2017 was registered for the offences under sections 143, 341 and 188 IPC. After completing the process of investigation, final report was filed and it was taken cognizance in CC No.53 of 2017 by the Judicial Magistrate No.1, Dindigul.

3. Seeking quashment of the same, this petition has been filed by the petitioner on the ground that none of the allegations mentioned either in the FIR or charge sheet attract any of the ingredients of the offences alleged.



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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

Fourth.-By means of criminal force, or show of criminal force, to any person, to take or obtain possession of



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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. The petitioner and others simply made protest against the liquor policy of the Government. 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 petitioner. So, that cannot be construed as 'unlawful or illegal'.



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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.

9. Similarly, section 341 is not attracted. There is no allegation to the effect that the accused persons 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



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

11. 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



12.No doubt that they are causing some sort of inconvenience to the public. For that, they ought to have been proceeded under Madras City Police Act. But instead of 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.

13. In the result, this criminal original petition is **allowed**. The case in CC No.53 of 2017 on the file of the Judicial Magistrate No.1, Dindigul is hereby quashed as against the petitioner. Consequently, connected Miscellaneous Petitions are closed.

21/06/2023

Index: Yes/No
Internet: Yes/No

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To,

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



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G.ILANGOVAN, J

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