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Crl.O.P.(MD)Nos.14400 and 14485 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	30.08.2023
Delivered on	26.09.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)Nos.14400 and 14485 of 2022

Crl.O.P.(MD) No.14400 of 2022:

- 1.RM Sagul Hameed @ Shahul Hameed
- 2.NM Sagul Hameed @ Shahul Hameed
- 3.Mohamed Niyash @ Mohamed Niyas
- 4.Abdul Malik
- 5.Asalam @ Mohamed Aslam

... Petitioners/
Accused Nos.1 to 5

Vs.

1. The Inspector of Police,
Adiramapattinam Police Station,
Thanjavur District.
Crime No.763 of 2021.

... Respondent/Complainant

2. Mr.Annadurai

... Respondent/
Defacto complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to a case in Crime No.763 of 2021 pending on the file of the first respondent police and quash the same as illegal as against the petitioners.



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Crl.O.P.(MD) No.14400 of 2022:

- 1.SMA Sagul Hameed @ Shahul Hameed
- 2.MAttu Sagul @ Shahul Hameed
- 3.Abdul Malik
- 4.Naina Mohamed
- 5.Purushothaman

... Petitioners/
Accused Nos.1 to 5

Vs.

1. The Inspector of Police,
Adiramapattinam Police Station,
Thanjavur District.
Crime No.793 of 2021.

... Respondent/Complainant

2. Mr.Annadurai

... Respondent/
Defacto complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to a case in Crime No.793 of 2021 pending on the file of the first respondent police and quash the same as illegal as against the petitioners.

For Petitioners : Mr.A.Mohammed Riyaz
(in both W.Ps.)

For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor
for R1 (in both W.Ps.)

COMMON ORDER



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The petitioners have filed these petitions seeking quashment of FIR in Crime Nos.763 and 793 of 2021 pending on the file of the first respondent police. Both the cases are registered against the petitioners for the offences punishable under Sections 143, 188, 269, 270 of IPC and Section 3 of Epidemic Diseases Act, 1897 and Section 51(b) of the Disaster Management Act, 2005.

2. According to the prosecution, on 05.11.2021 at about 16.45 hours, all the petitioners along with 20 other persons belonging to Tamil Nadu Muslim Munnetra Kazhagam party have assembled near Adhiramapattinam bus stop without following Covid-19 protocol and participated in a protest without prior permission on the basis of which a case in Crime Nos.763 and 793 of 2021 have been registered for the offences punishable under Sections 143, 188, 269, 270 of IPC and Section 3 of Epidemic Diseases Act, 1897 and Section 51(b) of the Disaster Management Act, 2005.



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3. It is submitted by learned counsel for the petitioner that the respondent police have filed charge sheet without any preliminary enquiry. The petitioners have not caused inconvenience to anybody. The petitioners are not affected with Covid-19 and there is nothing specifically mentioned in respect of offences they were alleged to have committed in order to attract offence under Sections 143, 188, 269, 270 of IPC and Section 3 of Epidemic Diseases Act, 1897 and Section 51(b) of the Disaster Management Act, 2005 and thereby sought for quashment of Crime Nos.763 and 793 of 2021.

4. Learned Additional Public Prosecutor has submitted that this case is one of the Covid-19 protocol violation cases and sought for taking lenient view.

5. The petitioners were charged under Sections 143, 188, 269, 270 of IPC and Section 3 of Epidemic Diseases Act, 1897 and Section 51(b) of the Disaster Management Act, 2005. It is the contention of the prosecution that on 05.11.2021 the petitioners and others started protesting near Adhiramapattinam bus stop ignoring Covid-19



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guidelines.

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6. 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."

7. 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 the offences as formulated under Section 141 of I.P.C. Thereby there is



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no material to show that the petitioner has committed the offences under Sections 143 of I.P.C.

8. 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.”

9. 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



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of the 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.

10. Section 188 of IPC runs as under:-

"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 direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may



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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. "

11. In order to prove the offence under Section 188 of IPC, the prosecution has to prove that the public servant has promulgated prohibitory orders and that the petitioners are knowing information about the promulgation of such prohibitory orders and then intentionally violated the said prohibitory orders only then the charge will sustain. Further, the public servant who has promulgated the prohibitory order has to file a complaint. Otherwise cognizance cannot be taken under Section 195 of Cr.P.C. But in the case on hand, Police Officer has filed the complaint.

12. Section 3 of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959, runs as under:-



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"3. Penalty for disfigurement by objectionable advertisements.- Whoever affixes to, or inscribes or exhibits on, any place open to public view any objectionable advertisement shall be punished with imprisonment of either description for a term which may extend to one year or with fine which may extend to one thousand rupees or with both."

13. Above provision speaks that if a person affixes or inscribes or exhibits on any place open to public view any objectionable advertisement shall be awarded sentence which may extend to one year or fine which may extend to Rs.1000/- or with both. In the present case, the prosecution has not produced any photographs or postures or banners displaying any objectionable advertisement open to public view by the petitioner and other accused thereby the offence will not sustain.

14. Considering the above, the prosecution failed to prove the offences as alleged against the petitioner and hence, the FIR in Crime Nos.763 and 793 of 2021 pending on the file of the first respondent police are liable to quashed.

15. In the result, these criminal original petitions are allowed and



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the FIR in Crime Nos.763 and 793 of 2021 pending on the file of the first respondent police are hereby quashed.

26.09.2023

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

PKN/mvs.

To

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



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DR.D.NAGARJUN,J

PKN/mvs.

Pre-delivery order made in
Crl.O.P.(MD)Nos.14400 and 14485 of 2022

Dated: 26.09.2023