



Crl.O.P.(MD) No.13934 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2023

CORAM:

THE HONOURABLE DR.JUSTICE G.ILANGO VAN

Crl.O.P.(MD)No.13934 of 2023
and
Crl.M.P(MD)Nos.10890 and 10933 of 2023

G.Sivabarathi

...Petitioner / Accused No.9

Vs.

1.State Rep. by

The Inspector of Police,
Dindigul Town North Police Station,
Dindigul.

(In Crime No.1081 of 2021)

...1st Respondent / Complainant

2.K.Manokaran

...2nd Respondent / Defacto Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the case registered in Impugned Charge Sheet in C.C. No.94 of 2022 on the file of the learned Judicial Magistrate No.II, Dindigul in Crime No.1081 of 2022 on the file of 1st Respondent Police and Quash the same as illegal.

For Petitioner :Mr.J.Lawrance

For Respondent :Mr.M.Vaikkam Karunanithi
Government Advocate (Crl. Side)



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ORDER

This Criminal Original Petition is filed seeking quashment of the case in C.C.No.94 of 2022 on the file of the Judicial Magistrate No.II, Dindigul.

2. The case of the prosecution is that on 09.11.2021, at about 11.00 a.m., when the police party, on their routine patrol duty, the members of a political party unlawfully gathered near Kallaraimedu at Dindigul-Trichy Road and Staged demonstration against the decision of the Government for releasing water from Mullai Periyar Dam. The above said assembly and protest was made without any prior permission from the concerned authorities. They also put up a flex board without permission. Based upon the occurrence, a case in Crime No.1081 of 2021 was registered for the offences under sections 143, 341, 283 and 270 IPC and sections 4A(1b) and 4(B) of the Tamil Nadu Open Place (Prevention of Disfigurements) Act, 1959. After that, charge sheet was filed and it was taken cognizance in CC No.94 of 2022 by the Judicial Magistrate No.II, Dindigul.



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3. Seeking quashment of the same, this petition has been filed by the petitioners, who are arrayed as A6 and A8.

4. Heard both sides.

5. An allegation of pandemic violation protocol imposed by the Government and making protest against the functioning of the Government without proper and prior permission.

6. Conducting demonstration or protest against the functioning of the Government, cannot be construed as 'illegal in nature'. It is a democratic right of every political party to make objection against the functioning or policy of the Government. So, that cannot be stated to be illegal.

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



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"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

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.



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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 none of the ingredients mentioned in 141 IPC are not attracting. They have simply made protest against the performance of the Government. 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 petitioner along with others. 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.



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12. Section 270 IPC is punishable upto two years or with fine or with both. Section 283 IPC is punishable with fine, which may extend to two hundred rupees. There is no question of limitation here. But it is also seen that the Government has taken policy decision to withdraw the cases registered against the public for pandemic violation.

13. The learned Additional Public Prosecutor has fairly admitted that such a Government Policy decision has been taken by the Government and subsequently, G.O. Has been passed.

14. So far as the provision of Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959 is concerned, it has been stated that near the place of occurrence, they put up a flex board. Even though, such an allegation has been made and materials have been collected during the course of investigation, nature of the alleged flex board put up by the protestors and the above said flex board has not been recovered during the course of investigation. The failure on the part of the authorities namely the Investigating Officer to recover the above said flex board, materially will affect the prosecution. If the trial is going to be undertaken,



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the above said non recovery of the flex board will fail the prosecution. The case against the co-accused has been quashed by the order of this Court in Crl.O.P(MD)No.11753 of 2023 dated 30.06.2023. On that ground also, this petition is liable to be allowed.

15. For all the reasons stated above, this criminal original petition stands allowed. The case in CC No.94 of 2022 on the file of the Judicial Magistrate No.II, Dindigul is hereby quashed against the petitioners. Consequently, connected Miscellaneous Petitions are closed.

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

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G. ILANGO VAN. J.

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To

- 1.The Judicial Magistrate No.II, Dindigul.
- 2.The Inspector of Police, Dindigul Town North Police Station, Dindigul.

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