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Crl.O.P.(MD)No.14713 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	17.08.2023
Delivered on	26.09.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.14713 of 2023
and Crl.M.P.(MD) No.11606 of 2023

1.I.Karthikeyan
2.E.Benjamin Franklin
3.S.Murugan
4.J.Manuvel Raj
5.S.Madasamy

... Petitioners/
Accused Nos.1 to 5

Vs.

1. The Inspector of Police,
Kovilpatti East Police Station,
Thoothukudi District.
Crime No.241 of 2021.

... 1st Respondent/Complainant

2. Murugesan

... 2nd Respondent/
Defacto complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the charge sheet in STC No.3450 of 2022 on the file of the Judicial Magistrate Court No.1, Kovilpatt, Thoothukudi District in Crime No.241 of 2021 on the file of the first respondent police, pending disposal of the criminal original petition.



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For Petitioners : M/s.M.Maria Vinola
For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor
for R1

ORDER

According to the prosecution, on 10.04.2021 at about 11.40 a.m., all the petitioners along with 30 other persons belonging to VCK party have assembled in front of ESI Hospital, Kovilpatti without following Covid-19 protocol and participated in a protest for Arakkonal child murder incident without prior permission on the basis of which a case in Crime No.241 of 2021 has been registered for the offences punishable under Sections 269, 143 and 188 of IPC and same was taken on file in STC No.3450 of 2022.

2. 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



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committed in order to attract offence under Section 143 of IPC and thereby sought for quashment of STC No.3450 of 2022.

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

4. The petitioners were charged under Section 269, 143 and 188 of IPC. It is the contention of the prosecution that on 10.04.2021 the petitioners and others started protesting on account of a murder of child at Arakkonam, ignoring Covid-19 guidelines.

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



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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 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.



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6. Section 143 of I.P.C speaks about a 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 in respect of death of a child at Arakkonam. 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 no material to show that the petitioner has committed the offences under Sections 143 of I.P.C.

7. 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



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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 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. "

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.

8. As per the version of the prosecution, the petitioners were violated the Covid-19 protocol. The prosecution has not placed before the Court what are the prohibitory orders promulgated by the public



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servant and how those protocols or prohibitory orders have been violated by the petitioners. There is no such record before this Court except mentioning that the petitioners have violated the Covid-19 protocols. Further, in order to take cognizance for the offence under Section 188 of IPC, a complaint has to be filed by the public servant who promulgated the orders as per Section 195 of Cr.P.C.

9. In this case, the Inspector of Police, Kovilpatti East Police Station, Thoothukudi District has registered a case *suo motu* against the petitioners for the offences under Sections 269, 143 and 188 of IPC. Admittedly, the said Inspector of Police has not promulgated any prohibitory orders to attract Section 188 of IPC. Therefore, when there are no prohibitory orders are issued and even if such prohibitory orders are issued, the public servant who issued such orders have not filed the complaint and hence, Section 188 of IPC will not sustain against the petitioners.

10. Therefore, considering from any angle, the charge sheet filed against the petitioners will not sustain and therefore, it is liable to be



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quashed. Accordingly, the charge sheet in STC No.3450 of 2022 pending on the file of the Judicial Magistrate Court No.1, Kovilpatti, Thoothukudi District in Crime No.241 of 2021, is hereby quashed. Consequently, the connected miscellaneous petition is closed.

26.09.2023

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



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To

- 1.The Inspector of Police,
Kovilpatti East Police Station,
Thoothukudi District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN,J

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Dated: 26.09.2023