



Crl.O.P.(MD) No.15413 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.09.2023

CORAM:

THE HONOURABLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.15413 of 2023

and

Crl.M.P.(MD)Nos.12233 of 12234 2023

Alagumalai

... Petitioner

Vs.

1.The State represented by
The Sub-Inspector of Police,
South Gate Police Station,
Madurai.

2.Pandiyan

..Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the petitioner in the final report in C.C.No.2631 of 2017 on the file of the Judicial Magistrate Court No.IV, Madurai, Madurai District in Cr.No.835 of 2017 on the file of the 1st Respondent Police and quash the same as illegal.

For Petitioner
For R1

:Mr.R.Udhayakumar
:Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



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ORDER

This Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure seeking quashment of the charge sheet in C.C.No.2631 of 2017 on the file of the learned Judicial Magistrate, Court No.IV, Madurai.

2.According to the prosecution version, on 30.10.2017 between 07.00 pm., to 10.00 pm., the petitioner and other co-accused have conducted a public meeting, thereby the respondent No.2/the Sub Inspector of Police, has filed a complaint, basing on which a case in Crime No.835 of 2017 has been registered for the offences punishable under Sections 143, 188 and 341 IPC.

3.It is submitted by the learned counsel for the petitioner that all the allegations levelled against the petitioner are false and that he has not committed any offence as alleged. It is submitted further that the accused Nos.1, 2, 5, 7 to 10 and 14 have earlier filed Crl.O.P.(MD) No.18559 of 2021 to quash the charge sheet in STC.No.2631 of 2017 and the same was allowed and the case against the accused Nos. 1, 2, 5, 7 to 10 and 14 was quashed by this Court.



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4.It is submitted further that as per the reported decision of ***Jeevanandhan and others Vs. State rep.by the Inspector of Police, Velayuthampalayam Police Station, Karur District and another*** reported in ***2018 (2) L.W.(CRL) 606***, the prosecution for the offence under Section 188 IPC will not lie.

5.The learned Additional Public Prosecutor submits that this Court has earlier quashed the charge sheet in STC.No.2631 of 2017 insofar as the other accused are concerned.

6.Heard the learned counsel on either side and perused the records.

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 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



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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. "

8.In order to prove the offence under Section 188 of IPC, the prosecution has to prove that prohibitory orders have been promulgated by a public servant and that the petitioner is aware of such promulgation promulgation of prohibitory orders and then intentionally has violated the said prohibitory orders, only then the charge will sustain. Further as per Section 195 (1) (a) (i) no Court shall take cognizance of the offence in respect of the offence punishable under Sections 170 to 188 of I.P.C., except on a complaint in writing by the public servant, who has promulgated. In the case on hand, the public servant who has promulgated the orders has not made any such complaint before the Police. Thereby on the face of it, the Police cannot charge the petitioners under Section 188 of I.P.C. Further the punishment for committing the offence under Section 188 of IPC, imprisonment for a term which may extend to one month or fine which may extend to Rs.200/- or both.



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9. Admittedly, in this case, the defacto complainant/the respondent No.2 is not a public servant, thereby there is a bar from taking cognizance of the offence under Section 188 IPC and accordingly, as per the decision reported in **2018 (2) L.W.(CRL) 606**, the case against the petitioner is liable to be quashed for the offence under Section 188 IPC.

10. Section 143 IPC deals with punishment for being a member of an unlawful assembly. In order to prove the offence, the prosecution has to prove that the petitioner as a common object has assembled to commit any one of the acts mentioned in Section 141 (I) or (ii) or (v) IPC. However, there is no allegation of the prosecution, which fixed into the facts alleged against the petitioner, thereby the offence under Section 143 IPC cannot be set to be committed by the petitioner.

11. Section 341 IPC deals with wrongful restrain of a person preventing him from proceeding beyond certain directions. No person is filed a complaint before the police that the petitioner has prevented them from proceeding with certain



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directions, thereby it cannot be said that the offence under Section 341 IPC is committed.

12.In view of the discussions made above and also considering the fact that the other accused, who are similarly placed, were found not guilty in Crl.O.P. (MD) No.18559 of 2021, this Petition is allowed and the charge sheet in C.C.No. 2631 of 2017 on the file of the learned Judicial Magistrate, Court No.IV, Madurai is hereby quashed, insofar as the petitioner/accused No.15 is concerned. Consequently, connected Miscellaneous Petitions are closed.

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

08.09.2023

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To

- 1.The Judicial Magistrate No.IV, Madurai.
- 2.The Sub-Inspector of Police,
South Gate Police Station,
Madurai.



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3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN. J.

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