



CrI.O.P.(MD) No.15582 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2023

CORAM:

THE HONOURABLE DR.JUSTICE D.NAGARJUN

CrI.O.P.(MD) No.15582 of 2023

and

CrI.M.P.(MD).No.12377 of 2023

- 1.Syed Ali
- 2.Shahul Hameed
- 3.Mohaideen Abdul Kadar
- 4.Syed Abdul Rahman
- 5.Ayubkhan
- 6.Syedali Badhush
- 7.Mohaideen
- 8.Seik Syed Ali
- 9.Mohamed Asan
- 10.Abdul Rahim
- 11.Mohaideen Abdul Kadar
- 12.Syed Ali
- 13,Syed
- 14.Mohamed Anish
- 15.Satham Hussain
- 16.Mohaideen

... Petitioners



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Vs.

1.State represented through the
Inspector of Police,
Puliankudi Police Station,
Tenkasi District.
(In Crime No.649 of 2020)

2.Yobu Sampath Rajan

...Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for records of impugned charge sheet in S.T.C.No.60 of 2023, on the file of the learned Additional District Munsif cum Judicial Magistrate, Sivagiri and quash the same as illegal against the petitioners.

For Petitioners : Mr.A.Mohamed Riyaz

For R1 : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed under Section 482 of Cr.P.C. seeking to quash S.T.C.No.60 of 2023 against the petitioners pending on the file of the learned Additional District Munsif cum Judicial Magistrate, Sivagiri.

2. The facts in brief relevant to this petition are that on 08.09.2020 at about 07.00 P.M., the *defacto* complainant, by name, Yobu Sampath Rajan has filed a complaint before the respondent Police Station alleging that he himself and



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his staff, who are on patrol duty as Police Officers near MGR Statue at Puliangudi Junction found that the petitioners and others without taking prior permission assembled unlawfully and demonstrated a protest for release of the persons, who have been undergoing sentence for more than twenty years in Ex.Prime Minister Mr.Rajiv Gandhi assassination case. Basing on which, a case has been registered for the offences under Sections 143, 283, 269 and 270 of I.P.C and Section 3-A of the Tamil Town Nuisances Act, 1889 in Crime No.649 of 2020 and charge sheet has been filed in S.T.C.No.60 of 2023 on 25.01.2023.

3. The petitioners have been challenging the said complaint on the following grounds:

(1). the petitioners are not committed any offence as alleged by the prosecution.

(2). The Right to Agitate is a fundamental Right and on account of the petitioners' agitation, no untoward incidents happened in respect of non-cognizable offence and the permission should have been obtained from the learned Magistrate in advance and the orders of this Court in CrI.O.P.(MD).No. 1356 of 2018 of batch, dated 20.09.2018 have not been followed.



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(3). In the FIR, it has been mentioned as petitioners and some other persons, but, the charge sheet is filed only against the petitioners without any basis.

4. Heard the both sides and perused the records.

5. A case has been registered by the respondent Police in Crime No.649 of 2020 for the offences under Sections 143, 283, 269 and 270 of I.P.C. r/w Section 3-A of the Tamil Nadu Town Nuisances Act, 1889 on 08.09.2020, but the charge sheet has been filed only on 25.01.2023.

6. Section 468 of Cr.P.C., reads as under:

"468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section

(2), after the expiry of the period of limitation.

(2) The period of limitation shall be—



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(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."

7. The punishment for the offence under Section 143 of I.P.C. is imprisonment for a term which may extend six months or with fine or with both. The punishment for the offence under Section 283 of I.P.C. is the fine which may extend upto Rs.200/-. The punishment for the offence under Section 269 of I.P.C. is imprisonment upto six months or with fine or with both. The punishment for the offence under Section 270 of I.P.C. is upto two years or with fine or with both. The punishment for the offence under Section 3A of the Tamil Nadu Nuisances Act, 1889 is the fine not exceeding fifty rupees or to imprisonment not exceeding eighty days.



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8. Considering the time limit prescribed under Section 468 of Cr.P.C.

it is to be examined as to whether the respondent Police can file charge sheet for the offence against the petitioners. Sofaras the offence in respect of Section 143 of I.P.C. is concerned, the charge sheet should have been filed within one year and in respect of the offence under Section 283 of IPC is concerned, since the punishment is only upto Rs.200/- the charge sheet should have been filed within six months. In respect of the offence under Section 269 of I.P.C., the punishment for which is six months, thereby, the charge sheet should have been filed within one year as per Section 468 (2) of Cr.P.C and admittedly, the offence under Section 270 of I.P.C. the punishment is upto two years, but, the charge sheet is filed beyond two years. In respect of the offence under Section 3A of the Tamil Nadu Nuisances Act, 1889 is concerned, the punishment is the fine not exceeding fifty rupees or to imprisonment not exceeding eighty days, thereby, the charge sheet should have been filed within six months. Therefore, the filing of charge sheet sofaras the offence under Sections 143, 283, 269 and 279 of I.P.C is illegal. Therefore, charge sheet in S.T.C.No.60 of 2023 shall not sustain.



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9. As per Section 270 of I.P.C. whoever malignantly does an act which he knows that his act likely to spread the infection of any disease dangerous to life shall be punished which may extend to two years or fine with both. According to prosecution on account of their negligence, the petitioners and others were likely to spread the Covid-19 infection. In order to consider the offence under Section 270 of I.P.C. there shall be material before the Court that the petitioners and others were suffering from infectious disease dangerous to life. Hence, Sections 269 and 270 of I.P.C. will not get attract.

10. Accordingly, this Criminal Original Petition is allowed and the impugned charge sheet in S.T.C.No.60 of 2023 against the petitioners on the file of the learned Additional District Munsif cum Judicial Magistrate, Sivagiri, is hereby quashed. Consequently, the connected miscellaneous petition is closed.

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

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DR.D.NAGARJUN. J.

tsg

To

- 1.The Additional District Munsif cum Judicial Magistrate,
Sivagiri.
- 2.The Inspector of Police,
Puliankudi Police Station,
Tenkasi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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