



CrI.O.P.(MD)No.18306 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12/10/2023

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The Hon'ble Mr.Justice **G.ILANGOVAN**

CrI.OP(MD)No.18306 of 2023

and

CrI.MP(MD)Nos.14486 and 14487 of 2023

T.David Raj : Petitioner/Sole Accused

Vs.

1.State rep. by
The Inspector of Police,
Thiruvattar Police Station,
Kanniyakumari District.

2.C.Charles,
Sub-Inspector of Police,
Tiruvattaru Police Station,
Kanniyakumari District. : Respondent/Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records relating to CC No.559 of 2018 on the file of the Judicial Magistrate Court No.II, Padmanabhapuram, Kanniyakumari District and quash the same as illegal so far as the petitioner is concerned.

For Petitioner : Mr.G.Aravinthan

For Respondents : Mr.M.Vaikkam Karunanithi
Government Advocate
(Criminal side)



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O R D E R

WEB COPY This criminal original petition has been filed seeking quashment of the case in CC No.559 of 2018 on the file of the Judicial Magistrate No.II, Padmanabhapuram, Kanniyakumari district.

2.The case of the prosecution in brief:-

On 02/08/2015 at about 08.00 am, the accused person along with his party men were making protest or demonstration demanding the Government to close the TASMAC shop near Auto junction. At that time, this petitioner alleged to have been illegally trespass into the BSNL Tower area and climbed up in the BSNL Tower measuring about 20 metre and caused nuisance demanding closure of the TASMAC shop. He was also criminally intimidated making threat to damage the BSNL Tower. On the basis of the above said occurrence, a case in Crime No.526 of 2016 was registered for the offences under sections 447 IPC and section 7(i)(a) of the Criminal Law Amendment Act. After completing the investigation, final report was filed and it was taken cognizance in CC No.559 of 2018 on the file of the Judicial Magistrate No.II, Padmanabhapuram.



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3. Seeking quashment of the same, this petition has been filed on the sole ground that none of the allegations mentioned either in the FIR or in the final report attract any of the ingredients of the offences punishable under section 447 IPC and section 7(1)(a) of Criminal Law Amendment Act.

4. Heard both sides.

5. From the narration in the preamble portion, it is seen that this petitioner is a member of a political party. On the particular date of the occurrence, the political party was staged demonstration or protest demanding closure of the TASMAC shop near the Auto junction. This petitioner in the course of the above said protest illegally trespassed into the BSNL Tower area, climbed up and caused nuisance.

6. So it is seen that there was no intention on the part of the petitioner to cause nuisance and damage to any property or property belongs to BSNL.

7. No doubt that entering into the area which is prohibited in nature will amount to criminal trespass. But during the course of investigation, it is seen that



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no document or material has been collected to show the above said area is prohibited area and prior notice was also put up in that place, prohibiting entry in that place.

8.It is seen that there was no intention on the part of the petitioner to cause nuisance to the occupant of the land namely BSNL. Genuine demand alleged to have been made by the petitioner and participated demanding closure of the TASMAL shop.

9.For attracting the offence under section 447 IPC, the ingredients under section 441 IPC must be satisfied.

10.Section 441 IPC reads as follows:-

"441. Criminal trespass.—Whoever enters into or upon property in the possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property, or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence, is said to commit "criminal trespass"



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11. Reading of the above said definition clause will indicate that trespass alleged to have been made by the petitioner causing nuisance to the occupant. But here, absolutely there was no nuisance and any communication violation or annoyance to the BSNL Tower.

12. No doubt that he has created some sort of nuisance. The prosecution ought to have taken steps to charge the petitioner at the relevant provision of Tamil Nadu City Police Act or he would have been taken into the preventive custody. But nothing has been done by the police, who are present in the place of the occurrence. They were watching the petitioner while he was climbing upon the Tower.

13. In normal circumstances, the petitioner would have been arrested to face the prosecution. But at the same time, initiation of the criminal proceedings for this act may not be proper. The petitioner ought to have been warned by the concerned authorities. Without resorting to such proper course of action, the criminal prosecution has been initiated, which I am of the considered view that as mentioned above, is totally disproportionate to the act that has been committed by the petitioner.



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14.On that sole ground, the entire prosecution is bad in law and accordingly this petition is liable to be allowed.

15.In the result, this criminal original petition stands allowed. The case in CC No.559 of 2018 on the file of the Judicial Magistrate No.II, Padmanabhapuram, Kanyakumari District is quashed as against the petitioner. Consequently, connected Miscellaneous Petitions are closed.

12/10/2023

Index:Yes/No
Internet:Yes/No

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To,

- 1.The Judicial Magistrate No.II,
Padmanabhapuram,
Kanniyakumari district.
- 2.The Inspector of Police,
Thiruvattar Police Station,
Kanniyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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