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Crl.O.P.(MD)No.19057 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 08/12/2023

CORAM

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

Crl.OP(MD)No.19057 of 2023

and

Crl.MP(MD)No.15059 and 15060 of 2023

1.Boominathan
2.Sakthivel
3.Senthil Raj
4.Palraj
5.Shyam Prasad
6.Kothalamuthu
7.Sivakumar
8.Saravanan

: Petitioners/A1 to A8

Vs.

The Inspector of Police,
C-5, Thirunagar Police Station,
Madurai District.

(In Crime No.174 of 2019) : Respondent/Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records relating to the charge sheet laid by the respondent in CC No.911 of 2020 on the file of the Judicial Magistrate No.VI, Madurai, Madurai District and quash the same.

For Petitioners : Mr.S.D.Krishnakumar

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



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O R D E R

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This criminal original petition has been filed seeking quashment of the case in CC No.911 of 2020 on the file of the Judicial Magistrate No.VI, Madurai.

2.The case of the prosecution in brief:-

On 05/05/2019 at about 05.30 pm, the accused persons, who are the supporters of a political party riding a two wheeler bearing registration No.TN-67-D-4736 followed by 10 other vehicles without obtaining any prior permission from the authorities concerned, thereby caused breach of public tranquility. Upon which, a case in Crime No.174 of 2019 was registered for the offences under sections 143, 174(F) of IPC r/w section 179 of Motor Vehicles Act, 1988. After completing investigation process, charge sheet has been filed and it was taken cognizance in CC No.911 of 2022 by the Judicial Magistrate No.6, Madurai for the offences under sections 143 and 171(F) of IPC.

3. Seeking quashment of the same, this petition has been filed by the petitioners on the ground that none of the allegations mentioned either in the FIR or in the final report attract any of the ingredients of the offences alleged.



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4.Heard both sides.

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

6.Section 141 of IPC reads as under:-

"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



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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.

Explanation.-An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly."

7. When we apply the ingredients to the factual position of the case, it is seen that none of the ingredients mentioned in 141 of IPC get attracted. The petitioners along with others only riding the two wheelers for supporting their party member in the election. That cannot be construed as 'unlawful or illegal'.

8. **Section 171F** of IPC reads as under:-

"Section 171F of IPC Punishment for undue influence or personation at an election.-- Whoever commits the offence of undue influence or personation at an election



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shall be punished with imprisonment of either description for a term which may extend to one year or with fine, or with both."

9.To attract the offence punishable under section 171F of IPC, it must be the case of the prosecution that by way of taking out the above procession, the petitioners intended to make undue influence upon the electorate. Mere taking out the procession, soliciting the votes will not amount to making influence upon the voters. So the ingredients are not attracted.

10.No doubt that the petitioners taking out the rally without proper permission, when the Election Code was in force. They ought to have proceeded properly. But registration of the criminal case for the offences under sections 143 and 174-F of IPC may not be proper.

11.With regard to the offence under section 179 of Motor Vehicles Act, it was deleted at the time of filing the final report. So no discussion is required on that point. The petitioners ought to have been warned by the respondent to disperse. But instead of warning them, it appears that criminal case has been registered as stated above.



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12.For the reasons stated above, the criminal prosecution against the petitioner is bad in law.

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13.In the result, this criminal original petition stands **allowed**. The case in CC No.911 of 2020 on the file of the Judicial Magistrate No.VI, Madurai is hereby quashed against the petitioner. Consequently, connected Miscellaneous Petitions are closed.

08/12/2023

Index:Yes/No
Internet:Yes/No

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To,

- 1.The Judicial Magistrate No.VI,
Madurai.
- 2.The Inspector of Police,
C-5, Thirunagar Police Station,
Madurai District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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