



Crl.O.P.(MD)No.19490 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 02/11/2023

CORAM

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

Crl.OP(MD)No.21382 of 2023

and

Crl.MP(MD)No.15276 of 2023

- 1.Yasar Arafath
- 2.Ponnusamy
- 3.Ibrahim
- 4.Auto Kadhar @ Kader Sherief : Petitioners/A1 to A4

Vs.

- 1.State through the Inspector
of Police,
Town South Police Station,
Dindigul District.
(In Crime No.811 of 2021) : R1/Complainant
- 2.Loganathan,
Village Administrative Officer,
Pallapatti Village,
Dindigul District. : R2/De-facto Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records of FIR in Crime No.811 of 2021 on the file of the respondent No.1 Police Station and quash the same as illegal and pass such further or other orders.

For Petitioners : Mr.SMA.Jinnah

For Respondents : Mr.R.M.Anbunithi
Additional Public Prosecutor



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O R D E R

WEB COPY This criminal original petition has been filed seeking quashment of the FIR in Crime No.811 of 2021 on the file of the 1st respondent.

2.The case of the prosecution in brief:-

The de-facto complainant lodged a complaint stating that he is working as Village Administrative Officer in Pallapatti village. On 06/07/2021 at about 05.00 pm, he received an information that near Yanai Theppa area, the members of a political party under the head of the Secretary namely Yasar Arafath staged protest against rising of the petrol, diesel prices, etc. There is no permission from the concerned authorities for making the protest. They were also compelled one Nagaiyan, who is aged 14 years to hold fire pot in his hand and also drawn the word of a political party in his body, thereby indulged in creating enmity between two political and religious parties. They took up the procession from Yanai Theppam area to old Post Office area. On the basis of the above said occurrence, a case in Crime No.811 of 2011 was registered for the offences under sections 143, 283, 341, 153A, 295A and 506(ii) IPC r/w 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015.



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3. Seeking quashment of the same, this petition has been filed by the petitioners, who are arrayed as A1 to A4 on the ground that they have conducted only a peaceful demonstration and there is no intention to cause any enmity between two religious people.

4. Heard both sides.

5. It is not denied by the petitioners that on 06/07/2021 at about 05.00 pm, the petitioners along with other persons made a protest against the hike of petrol and diesel prices and conducted procession also. During the course of procession, it is alleged that these petitioners alleged to have used one juvenile by drawing a political party name on his body and took him in the procession.

6. No doubt that staging protest, taking procession as a show by protest is a democratic right. It is a fundamental right of every citizen. That right is exercised by the petitioners. But the materials shows that no proper permission was obtained from the concerned authorities. It is nothing, but a wrong committed by the petitioners. That ought to have been avoided by the petitioners. Absolutely, no damage has been caused to any



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public or private properties during the course of the procession. For violating the relevant provisions and not getting proper permission, the petitioners ought to have been proceeded under the relevant Act. But the initiation of the proceedings as if it caused some sort of discomfort or ill-motive between two religious group of people is completely out of place and cannot be accepted at all. The intention of the petitioners is not to create any disharmony among two groups of religious people or inciting violence. Their aim was to draw the attention of the Government over the rise of the petrol and diesel prices. So without registering the FIR, the competent authority ought to have warned the petitioners to disperse and discontinue the procession as the case may be or at least they have to take up the procession into their custody. Without resorting such a legal means, it appears that a case has been registered by giving different colour, which is completely out of place and not answering the situation.

7. With regard to the offence under section 75 of the Juvenile Justice (Care and Protection of Children) Act, it has been stated that one Yasar Arafath forcibly took the juvenile by drawing a political party name on his body to the procession.



8. Section 75 of the Juvenile Justice (Care and Protection of Children) Act, reads as under:-

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"75. Punishment for cruelty to child.

Whoever, having the actual charge of, or control over, a child, assaults, abandons, abuses, exposes or wilfully neglects the child or causes or procures the child to be assaulted, abandoned, abused, exposed or neglected in a manner likely to cause such child unnecessary mental or physical suffering, shall be punishable with imprisonment for a term which may extend to three years or with fine of one lakh rupees or with both:

Provided that in case it is found that such abandonment of the child by the biological parents is due to circumstances beyond their control, it shall be presumed that such abandonment is not wilful and the penal provisions of this section shall not apply in such cases:

Provided further that if such offence is committed by any person employed by or managing an organisation, which is entrusted with the care and protection of the child, he shall be punished with rigorous imprisonment which may extend up to five years, and fine which may extend up to five lakhs rupees:



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Provided also that on account of the aforesaid cruelty, if the child is physically incapacitated or develops a mental illness or is rendered mentally unfit to perform regular tasks or has risk to life or limb, such person shall be punishable with rigorous imprisonment, not less than three years but which may be extended up to ten years and shall also be liable to fine of five lakhs rupees."

9.To attract section 75 of the Juvenile Justice (Care and Protection of Children) Act, the birth certificate of the Juvenile ought to have been collected during the course of investigation. But perusal of the CD file does not indicate the collection of the birth certificate or at least medical evidence for assessing the age of the juvenile namely Nagaiya. Without collecting the basic document, final report has been filed. So in the absence of any such material, even if the petitioners are directed to undergo the trial process, the punishment under section 75 of the Juvenile Justice (Care and Protection of Children) Act, 2015 is remote to be imposed. How this important aspect missed the notice of the Investigating Officer is not explained.



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10.Further perusal of the CD file shows that the alleged juvenile Nagaiya was not examined even as a witness. No doubt that these petitioners after realizing the situation, ought to have avoided the same, but for their careless act, criminal prosecution will not be the answer. On that sole ground, this petition is liable to be allowed.

11.In the result, this criminal original petition is **allowed**. The FIR in Crime No.811 of 2021 on the file of the 1st respondent is hereby quashed against the petitioners. Consequently, connected Miscellaneous Petition is closed.

Index:Yes/No
Internet:Yes/No
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02/11/2023

To,

- 1.The Inspector of Police,
Town South Police Station,
Dindigul District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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