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CrI.O.P.(MD)No.22012 of 2022



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.02.2023

Delivered on : 05.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CrI.O.P.(MD)No.22012 of 2022

and

CrI.M.P.(MD)No.15556 of 2022

1.R.Mohamed Elias @ Mohamed Eliyas

2.S.Mohamed Ali @ Bakrudeen Ali Ahamed

3.S.Nazir Hussain @ Najeer

4.Umar Ali

5.M.Sheik Dawood @ Sheik

... Petitioners/
Accused 1 to 5

vs.

1.State represented through
The Inspector of Police,
Town South Police Station,
Dindigul District.
(Crime No.2056 of 2020)

... Respondent/
Complainant

2.Mohamed Jakkiriya

... Respondent/
Defacto
Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to
call for the records of impugned Charge Sheet in S.T.C.No.945 of 2022



on the file of the learned Judicial Magistrate No.III, Dindigul and quash the same as illegal as against the petitioners.

For Petitioners : Mr.A.Mohamed Riyaz

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

For R2 : No appearance for R2

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to the case in S.T.C.No.945 of 2022 pending on the file of the Court of the Judicial Magistrate No.III, Dindigul and quash the same.

2. The petitioners are the accused 1 to 5 in S.T.C.No.945 of 2022 pending on the file of the Court of the Judicial Magistrate No.III, Dindigul.

3. On the basis of the complaint lodged by one Mohamed Jakkiriya, Village Administrative Officer, Adiyanuthu Village, Dindigul District, FIR came to be registered in Crime No.2056 of 2020 on 24.12.2020 for the alleged offences under Sections 143, 269 and 341 IPC and Section 3 of Epidemic Act against the petitioners herein.



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4. The first respondent, after completing the investigation, has laid a final report dated 25.11.2021 under Section 173 Cr.P.C. against the petitioners for the alleged offences under Sections 143 and 341 IPC and the case was taken on file in S.T.C.No.945 of 2022 and the same is pending on the file of the Judicial Magistrate No.III, Dindigul.

5. The case of the prosecution is that on 24.12.2020 at about 01.45 p.m., the second respondent/defacto complainant and his Assistant Jayaraj were monitoring near Gandhiji New Road, Makkan Street Junction, the petitioners and 20 others had assembled unlawfully and raised objections to erect a telephone tower in a private building and that they had conducted road-roko without getting prior permission, from 01.45 p.m. to 02.15 p.m.

6. No doubt, as rightly contended by the learned counsel appearing for the petitioners, though the FIR came to be registered for the offences under Sections 143, 269 and 341 IPC and Section 3 of Epidemic Act, after investigation, charge sheet came to be filed for the offences under Sections 143 and 341 IPC.

7. It is pertinent to note that in the charge sheet itself, it has been



specifically stated that the petitioners were wearing masks and were maintaining social distancing, while conducting road-roko agitation.

8. The learned counsel appearing for the petitioners would submit that the petitioners are no way connected with the alleged occurrence, that the private mobile company had tried to install phone tower in a private property without getting prior permission from the concerned authorities, for which, the petitioners along with other residents of that area had opposed the erection of the said tower, that grievance of the petitioners and other residence were not heard by anyone and hence, they were conducting agitation in a democratic way, that there was no untoward incident happened on that particular day and that the first respondent has registered the above case for statistics purposes.

9. Regarding the offence under Section 143 IPC, it is necessary to refer the judgment of this Court in ***Jeevanandham and Others vs State, represented by the Inspector of Police***, reported in ***2018(2) LW (Crl.) 606***, and the relevant passage is extracted hereunder:-

“32.....

2.In all the cases, the assembly of persons were



expressing dissatisfaction on the governance and claiming for minimum rights that are guaranteed to an ordinary citizen. If such an assembly of persons are to be trifled by registering an FIR under Section 143 of IPC and filing a Final Report for the very same offence, no democratic dissent can ever be shown by the citizens and such prohibition will amount to violation of fundamental rights guaranteed under the Constitution.”

10. As rightly held in ***Jeevanandham's case***, the violation of Section 30(2) of the Police Act will not constitute an offence under Section 143 IPC, as an order passed under Section 30(2) of the Police Act is only regulatory in nature, by which, the police cannot prohibit any agitations.

11. The learned counsel appearing for the petitioners would further submit that even according to the prosecution, the petitioners and others have gathered in that place to raise their objections for erecting the cellphone tower in a private building without the permission of the concerned authorities and that such a protest by the residents can only be considered as a protest in a democratic way and the same would not constitute an offence under Section 143 IPC.



12. Even according to the prosecution, there was no untoward incident happened at that time. As rightly contended by the learned counsel appearing for the petitioners, the prosecution does not even state as to how the demonstration or the protest conducted by the petitioners is an unlawful protest and as such, this Court has no hesitation to hold that the case of the prosecution does not satisfy the requirements of the Section 143 IPC.

13. Now turning to the Section 341 IPC, it is necessary to refer the following passages in *Jeevanandham's case*, above referred,

“32.....

2. A reading of the Final Report also does not make out an offence under Section 341 Cr.P.C. since any form of an agitation, will necessarily cause some hindrance to the movement of the general public for sometime. That by itself, does not constitute an offence of a wrongful restraint.”

14. The prosecution in order to invoke Section 341 IPC has to establish that a person voluntarily obstructed any person so as to prevent that person from proceeding in any direction in which a person has a right to proceed. In the present case, as already pointed out, the



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petitioners and the other residents of that locality had assembled and conducted an agitation protesting the erection of a cellphone tower in a private building and that there is absolutely no material or evidence available to show that they have voluntarily obstructed any person. Even assuming that there existed some hindrance for the movement of the general public for some time, as rightly held in *Jeevanandham's case* that by itself does not constitute an offence of wrongful restraint. Considering the above, this Court has no hesitation to hold that the prosecution case does not make out any offence of the wrongful restraint.

15. From the above discussions, this Court concludes that the impugned proceedings in S.T.C.No.945 of 2022 are liable to be quashed.

16. In the result, this Criminal Original Petition is allowed and the impugned proceedings in S.T.C.No.945 of 2022 pending on the file of the Judicial Magistrate No.III, Dindigul are quashed. Consequently, connected Miscellaneous Petition is closed.

05.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
csm



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K.MURALI SHANKAR, J.

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To

- 1.The Judicial Magistrate No.III,
Dindigul.
- 2.The Inspector of Police,
Town South Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Pre-delivery order made in
Crl.O.P.(MD)No.22012 of 2022
and
Crl.M.P.(MD)No.15556 of 2022

Dated : 05.04.2023