



Crl.O.P.(MD)No.19157 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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RESERVED ON : 21.11.2024
PRONOUNCED ON : 05.12.2024

CORAM:

THE HONOURABLE MR. JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.19157 of 2024
and
CRL MP(MD)No.11820 & 11822 of 2024

Sutharsan

... Petitioner / Accused No.1

Vs.

1.State Rep.by

The Inspector of Police,
Koodankulam Police Station,
Tirunelveli District.
Crime No.358 of 2021.

... 1st Respondent / Complainant

2.Dennis

FST : 02, Incharge,
Valliyoore and Radhapuram Panchayat,
Tirunelveli District.

... 2nd Respondent / Defacto
Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the Criminal Case in Spl.C.CNo.401 of 2022 pending on the file of the learned Judicial Magistrate, Radhapuram, Tirunelveli District and quash the same in respect of the petitioner is concerned by allowing this Quash Petition.



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For Petitioner : Mr.N.Balasubramanian
For R1 : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor
For R2 : No Appearance

ORDER

The petitioner / A1 in Spl.C.C.No.401 of 2022, pending on the file of the learned Judicial Magistrate, Radhapuram, Tirunelveli District, facing trial for the offence under Sections 171(H), 283 and 291 of IPC., has filed this Criminal Original Petition, seeking a direction to quash the charge sheet.

2. The case against the petitioner is that the defacto complainant was a Head of the Flying Squad No.2, formed during the Panchayat Union Election and he was entrusted with Valliyoor and Radhapuram Panchayat Union Election, along with him, 3 police personnels, 1 SSI and 2 Head Constables of Panagudi and Thisayanvilai Police Station formed a team. On 26.09.2021 at about 6.00 p.m., defacto complainant received a message from the Control Room, Collectrate of Tirunelveli, that without permission, the accused persons campaigning for the election, using TATA Ace Load Auto, bearing Reg.No.TN-72-AV-4438, near Chettikulam Bus Stand, along with nearly 400 persons causing obstruction to the traffic. The Flying Squad reached the spot, instructed the petitioner to disperse and



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ordered the crowd to clear the place causing no disruption for the movement of public and Transport. They failed to move and clear the place. Hence, he lodged a complaint with the respondent police and the case registered against the petitioner and others. On completion of investigation, the respondent filed the charge sheet against the petitioner and others, listing 10 witnesses. At this stage, the present, quash application has been filed.

3. Mr.N.Balasubramanian, the learned counsel appearing for the petitioner would submit that the entire allegation made by the defacto complainant / 2nd accused is with *mala fide*, without any material, lodged at the behest of the party in power. The complaint primarily lodged for disqualifying the petitioner from participating in the election and thereby, scuttling the candidates democratic right. In the FIR, it is recorded that nearly 400 persons participated during campaigning, but none of them have been arrayed as accused on the other hand, the candidates and the van driver alone are arrayed as accused in this case. As per Section 171-H IPC., it pertains to illegal payments in connection with the election. But, in this case, there is nothing to show that the petitioners made any illegal payment to any voter or public. Neither the public made any complaint nor any cash seized in this case. Further, the offence under Section 283 IPC will not get attracted when there is nothing to show that there was any



obstruction to any public way. Likewise, the offence under Section 294 IPC., also will not get attracted when there is no material to show that any public servants, who is lawful authorities, issued any injunction against the petitioner in conducting the campaigning and any force or harm committed by the petitioner.

4. The learned counsel further submitted that the petitioner is a Councilor of Ward No.11. The other accused in this case are Valliyoor Union Councilor for 15th Ward and candidates for the Panchayat President Post in Chettikulam and the driver of the load auto. Thus, to spike vengeance to scuttle the petitioner from contesting, campaigning and participating in a democratic process, the above case has been registered, to somehow disqualify the candidature of the petitioner to a public office, Further, prosecution has listed 10 witnesses. L.Ws.1 to 4 are the Flying Squad Team Members; L.W.2 to 4 are police personnels; L.Ws.5 and 6 are Observation Mahazar and Rough Sketch witnesses; L.Ws.7 and 8 are the witnesses for seizure of vehicle, load auto; L.W.9 is the Police Head Constable, who received the complaint and registered the FIR and L.W.10 is the Investigating Officer. From going through the uncontroverted statement of witnesses, it is clear no offence is made out. The learned counsel, in support of his contentions, has relied on a decision of this Court in the case of ***Muthu and Another Vs. Inspector of Police*** made in



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Crl.O.P.(MD)No.13504 of 2024, dated 30.09.2024, wherein this Court has held that Section 291 IPC., can be invoked only for the breach of the order passed under Section 143 of Cr.P.C., and in the absence no offence under Section 291 can be charged against the petitioner. Hence, the learned counsel prayed for quashing the charge sheet.

5. Mr.A.Thiruvadi Kumar, the learned Additional Public Prosecutor, would submit that the defacto complainant is a public servant, incharge of Valliyoor and Radhapuram Panchayat Flying Squad No.2, who lodged the complaint against the petitioner and 3 others in campaigning near Chettikulam Bus Stand, a busy area, without any permission. The petitioner along with nearly 400 persons obstructed the movement of the public and public transport and assembling in such huge numbers without permission is an offence. The defacto complainant received a message from the Control Room from the Collectorate, thereafter, he gone along with the team, found the petitioner campaigning, obstructing the public, when ordered to disburse, petitioner refused. Thereafter, he lodged a complaint and on the complaint of the defacto complainant, case registered, investigation conducted, statement of witnesses recorded, Observation Mahazar, Rough Sketch drawn in the presence of witnesses and the vehicle used in the campaign seized. Thereafter, on conclusion of investigation, charge sheet filed.



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6. I have heard the learned counsels appearing on either side and perused the materials available on record.

7. It is not in dispute that on 26.09.2021, election campaign was progress for the Panchayat Election. The petitioner belongs to opposition party, contesting candidates, campaigning for the election in exercise of democratic process. The petitioner permitted to campaign for the election. The case is that the petitioner along with 400 persons was campaigning and blocked the movement of the public, without obtaining any prior permission. None of the public examined to prove the fact that such campaigning conducted by the petitioner and thereby, obstructed the movement of the public and transport. It is also seen that from the 400 persons, no one shown as accused in this case, apart from the contesting candidates and driver of the load auto none are prosecuted. It is also to be seen that the statement of the defacto complainant / L.W.1 is that on 26.09.2021 he gone to the respondent police station, lodged a complaint and FIR got registered at about 11.00 p.m., which is corroborated by L.Ws.2, 3 and 4 the member of Flying Squad. The Observation Mahazar witnesses L.Ws.6 and 7, statement is that at the same time at about 11.00 p.m., in their presence, the respondent police prepared Observation Mahazar and Rough Sketch, which is not be possible. FIR registered



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at 11.00 pm., and the distance between the scene of occurrence and Police Station is roughly around 10 kms., It is humanly impossible registering the FIR., preparation of Mahazar at the same time. Either of one is not true, which causes serious doubts in the manner and time in which the FIR registered and the investigation conducted.

8. Added to it, in this case, the statement of L.W.9, the Head Constable, who received the complaint and registered the FIR is that on 26.09.2021 at about 16.30 Hrs. @ r.30 p.m., he received the complaint from LW.1., registered the Crime No.358 of 2021 for the offence under Sections 171(H), 283 and 291 of IPC. Again this cannot be possible. The specific case of the defacto complainant is that he received the information at about 6.00 p.m., on 26.09.2021, thereafter, reaches the scene of occurrence at about 6.30 p.m., which only fortifies the petitioner's contention that a false case registered against the petitioner and others, since they are contesting candidates, who belong to opposition party. Further, the uncontroverted statement of the witnesses taken as a whole, then, there is nothing to show that any of the offence is made out. In view of the same, this Court finds further continuation of the proceedings is nothing but abuse of process of Court.



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9. In the result, this Criminal Original Petition is allowed and the proceedings in Spl.C.CNo.401 of 2022, pending on the file of the learned Judicial Magistrate, Radhapuram, Tirunelveli District, is hereby quashed against the petitioner and all other accused, who are also similarly placed. Consequently, the connected miscellaneous petitions are closed.

05.12.2024

Speaking Order/Non Speaking Order
Index : Yes/No
Internet : Yes
smn / mpk



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To

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1. The Judicial Magistrate,
Radhapuram,
Tirunelveli District.
- 2.The Inspector of Police,
Koodankulam Police Station,
Tirunelveli District.
- 3.The Addl.Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.NIRMAL KUMAR , J.

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Pre-Delivery Order made in
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