



Crl.O.P.(MD)No.14653 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

Reserved on : 01.10.2024

Delivered on : 30.10.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.14653 of 2024

and

Crl.M.P(MD)No.9160 of 2024

1.Ponnaiah

2.Pappu

3.Gomathi

4.Veerasamy

5.Thangaraj

6.Chandran

7.Navaneedthakrishnan

8.Vinothkumaran

9.Athimoolam

10.Chandran

11.Rajeswaran

12.Chithiraiputhiran

13.Paramanandham



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14. Prakash

WEB COPY 15. Sudalaimuthu @ Muthu

16. Pandiraj

17. Ramesh

18. Udaiyar

19. Anandhakumar

20. Palanichamy @ Guru Palanichamy

21. Paramasivam

22. Sanjeevi @ Aasari

23. Shanmuga Anand

24. Prabu

25. Murugan

26. Ramu

27. Mariyappan

28. Sangarasubbu

29. Karmegam

30. Durai Kandasamy

31. Ganapathy

32. Saravanakumar

33. Maruthupandi



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34.Murugesan

35.Jeyaraj

36.Murugan

37.Ravikumar

38.Rajesh Kannan

39.Kalirajan

40.Thangamani

41.Karuppasamy

42.Pandiyan

43.Raja Kalimuthu

44.Thangamanivelan

45.Nagarajan

46.Ponraj

47.Manikandan

48.Balaguru

49.Chandrasekar

50.Yuvarajan

51.Suresh

52.Ayyappan



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53.Palpandi

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54.Pitchai

55.Muthu Rathinam

56.Subramani

57.Dharmaraj

58.Mohanraj

59.Karuppasamy

60.Nagendran

61.Vanaraj

62.Mayakannan

63.Karthickeyan

64.Maheshwaran

65.Ayyadurai

66.Esakkimuthu

67.Sureshkumar

68.Balamurugan @ Balu

69.Sundar

70.Muthurasu

71.Sundaramoorthy

72.Nallasamy

... Petitioners/A1 to 7 and 9 to 73



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Vs.

1.State rep. by the Inspector of Police,
Srivilliputhur Town Police Station,
Virudhunagar District.
Crime No.407 of 2022.

2.R.Geetha,
Inspector of Police,
Srivilliputhur Town Police Station,
Virudhunagar District. ... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, to call for the records relating to S.T.C.No.1343 of 2022 on the file of the learned Judicial Magistrate No.II, Srivilliputhur and quash the same as against the petitioners are concerned.

For Petitioners : Mr.M.Karthikeya Venkitachalapathy

For Respondents : Mr.K.Sanjai Gandhi,
Government Advocate (Crl. Side)
for R1.

ORDER

The Criminal Original Petition has been filed, invoking Section 528 B.N.S.S., seeking orders,call for the records relating to S.T.C.No.1343 of 2022 on the file of the learned Judicial Magistrate No.II, Srivilliputhur and quash the same.



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2. The case of the prosecution is that on 25.09.2022, the petitioners unlawfully assembled in a public place condemning the act of the police for not granting permission to conduct Vinayagar Chathurthi procession and that they had disturbed the traffic and the bus transport and despite the direction to disperse, they have failed to disperse.

3. The petitioners are the accused 1 to 7 and 9 to 73 in S.T.C. No.1343 of 2022, for the alleged offence under Sections 341, 143 and 151 of IPC, on the file of the learned Judicial Magistrate No.II, Srivilliputhur.

4. The case of the petitioners is that since the police has refused to give permission for Vinayagar Chathurthi procession, they have raised their voice to exercise their religious and democratic right, but the police *suo motu* lodged a complaint and registered the case against all the participants.

5. The learned counsel for the petitioners would submit that no specific overtact had been attributed against the petitioners; that there are



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no specific averments against the petitioners to invoke the offences alleged
WEB COPY in the FIR; that there was no order by the public servant and hence, the question of violating the said order does not arise and that therefore, the petitioners were constrained to file the above petition invoke Section 528 of BNSS.

6. Regarding Section 143 IPC, the learned counsel for the petitioner has relied on the judgment of this Court in **Crl.O.P(MD) No.12612 of 2022 (Annadurai Vs. The Inspector of Police, South Gate Police Station, Madurai and another), dated 06.09.2022** and the relevant passage is extracted hereunder :

“9.In the case on hand, the First Information Report has been registered by the respondents / police for the offences also under Sections 143 and 188 IPC. He is not a competent person to register FIR for the offences under Section 188 of IPC. As such, the First Information Report or final report is liable to be quashed for the offences under Section 188 of IPC. Further, the complaint does not even state as to how the protest formed by the petitioner and others is an unlawful protest and does not satisfy the requirements of Section 143 of IPC. Therefore, the final report cannot be sustained and it is liable to be quashed.”



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7. The learned counsel for the petitioners would submit that the protest by the petitioners for refusing the permission to conduct Vinayagar Chathurthi idol procession is a democratic right and the same would not constitute an offence under Section 143 IPC.

8. As rightly contended by the learned counsel for the petitioners, the prosecution does not even state as to how the demonstration conducted by the petitioners is an unlawful protest and as such, this Court has no hesitation to say that the case of the prosecution does not satisfy the requirements of the Section 143 IPC.

9. 11. Now turning to the offence under Section 341 IPC, it is necessary to refer the following passage in ***Jeevanandham and Others vs State, represented by the Inspector of Police, reported in 2018(2) LW (Crl.,) 606.***

“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



WEB COPY such an assembly of persons are to be trifled by registering an FIR under Section 143 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. 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.”

10. The prosecution in order to invoke Section 341 I.P.C., 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 case on hand, as already pointed out, the petitioners had assembled and conducted agitation against the refusal of permission to conduct Vinayagar Chathurthi idol procession and there is absolutely no material 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.



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11. Now coming to the offence under Section 151 IPC, Section 151
IPC contemplates that knowingly joining or continuing in assembly of five
or more persons, after it has been commanded to disperse. Section 151
IPC will be attracted, only if there is evidence to show that assembly had
been lawfully commanded to disperse.

12. In the case on hand, there is absolutely no material or evidence
to show that the police authorities have given any such command.
Considering the above, this Court has no hesitation to hold that the
impugned charge sheet in S.T.C.No.1343 of 2022 on the file of the learned
Judicial Magistrate No.II, Srivilliputhur, is liable to be quashed.

13. In the result, the Criminal Original Petition is allowed and the
impugned charge sheet in S.T.C.No.1343 of 2022 on the file of the learned
Judicial Magistrate No.II, Srivilliputhur, is quashed. Consequently,
connected Miscellaneous Petition is closed.

30.10.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
das



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To

1. The Judicial Magistrate No.II,
Srivilliputhur.
2. The Inspector of Police,
Srivilliputhur Town Police Station,
Virudhunagar District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

DAS

Pre-delivery order made in
Crl.O.P.(MD)No.14653 of 2024
and
Crl.M.P(MD)No.9160 of 2024

Dated: 30.10.2024