

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2019

CORAM:

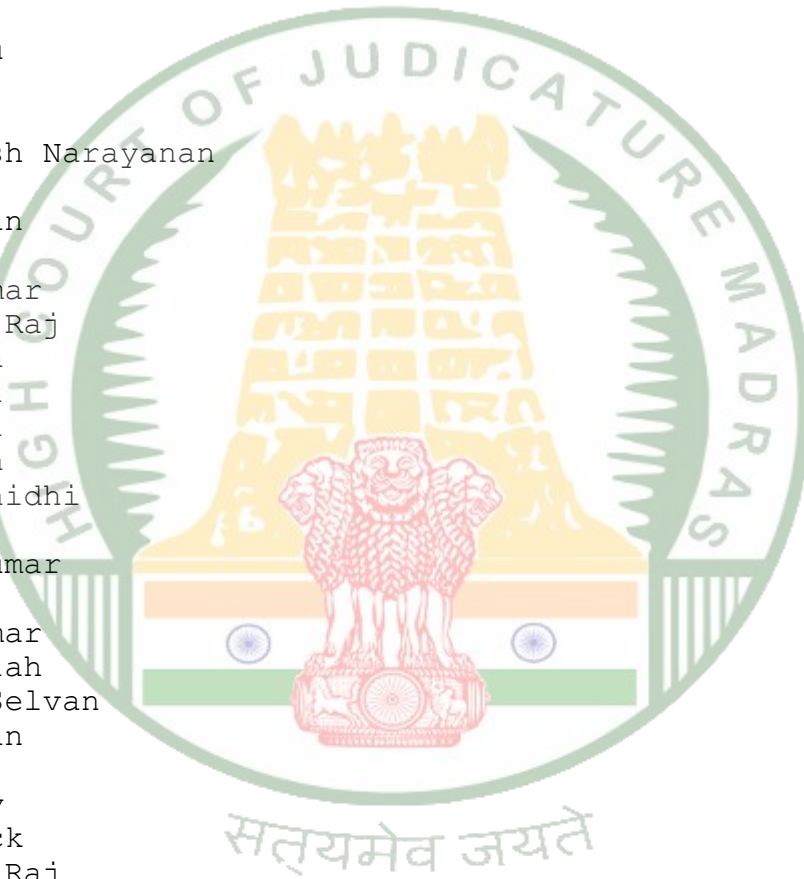
THE HONOURABLE MR.JUSTICE M.S.RAMESH

Crl.O.P.No.23839 of 2019

and

Crl.M.P.No.12569 of 2019

- 1.K.Suresh
- 2.S.Rajaguru
- 3.Mohan Raj
- 4.V.Seetha
- 5.Jayaprakash Narayanan
- 6.Selvan
- 7.P.Natarajan
- 8.R.Murugan
- 9.Dinesh Kumar
- 10.R.Sundar Raj
- 11.Bernatsha
- 12.Nagapandi
- 13.K.Pazhani
- 14.Saravanan
- 15.T.Karunanidhi
- 16.Divakar
- 17.V.Selvakumar
- 18.Rajesh
- 19.Udhayakumar
- 20.K.Kumaraiah
- 21.S.Vetri Selvan
- 22.Damodharan
- 23.Raja
- 24.Duraisamy
- 25.P.Karthick
- 26.D.Victor Raj
- 27.S.Arjunan
- 28.A.Krishnan
- 29.R.Baskar
- 30.S.Chandrakumar
- 31.Gnanasekaran
- 32.R.Mohan
- 33.Nithyanandan
- 34.Loganathan
- 35.J.Gavaskar
- 36.Gurumurthy
- 37.Selvakumar
- 38.M.Ravi
- 39.Sakthivel
- 40.Panneerselvam
- 41.Kalisamy
- 42.Rajesh Kumar



WEB COPY

43.Venkatesaperumal
44.Johnpal
45.M.Nagarajan
46.T.Jenifer
47.S.Devi

... Petitioners/Accused

/Vs./

State represented by
The Inspector of Police,
B-3, Fort Police Station,
Chennai.

... Respondent / Complainant

Prayer:- Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to in Crime No.85 of 2018 on the file of the respondent police and quash the same.

For Petitioners :Mr.K.Bharathi

For Respondent :Mr.C.Iyyapparaj
Additional Public Prosecutor

ORDER

All the petitioners herein have been implicated for the offence under Sections 147, 188 and 151 r/w Section 7(1) (a) of the Criminal Law Amendment Act, 2005.

2. The case against these petitioners as revealed in the complaint is that all the petitioners herein had assembled in front of the Secretariat at Chennai protesting against the retrenchment of workers by Renault Nissan Management.

3. Insofar as the offence under Section 188 IPC is concerned, the law with regard to the procedure to be adopted for an offence under Section 188 IPC has been well settled through a catena of judgments. As a matter of fact, the very procedure contemplated under Section 195 Cr.P.C., is patently clear to the effect that a police officer cannot take cognizance of an offence falling within Sections 172 to 188 IPC and the procedure for such prosecution is contemplated only under Section 195 Cr.P.C. Consequently, the jurisdictional Court is also deprived of taking cognizance of an offence under Section 188 IPC based on a police report filed under Section 173 (2) Cr.P.C. Such an offence can be only by way of a complaint by the concerned public servant as contemplated under Section 195 Cr.P.C.

4. In the instant case, the respondent police had chosen to register the FIR against the petitioner herein for the offence under Section 188 IPC, which is opposed to the aforesaid procedure laid down. Hence, the offence under Section 188 IPC will not be made out.

5. Insofar as the offence under Sections 147 and 151 IPC is concerned, a perusal of the Statement of the witnesses under Section 161 (3) Cr.P.C., reveals that the petitioner along with others had not assembled with a common object to overawe by criminal force, or show of criminal force, the Government or any public servant, to resist the execution of any law, or any legal process, or to commit any mischief or criminal trespass, or other offence or by means of criminal force, or to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, etc., or by means of criminal force, to compel any person to do what he is not legally bound to do. To constitute an unlawful assembly, the common object of the assembly must be an immediate one to be carried on to effect forthwith. Therefore, to determine the commission of offence of an unlawful assembly would be as to whether the object of the accused persons was unlawful.

6. In the instant case, none of the witnesses speak about criminal force or trespass or had committed mischief. As such, the assembly could be determined as a peaceful assembly. In the absence of any crime or attempt to commit a crime, the ingredients necessary for an unlawful assembly, are not made out. When this group of persons cannot be termed as people of unlawful assembly, the offence under Sections 147 and 151 IPC will not be made out.

7. When all these three offences namely 147, 151 and 188 IPC may not be sustained, it would not be appropriate for the respondent police to proceed with the investigation as against these petitioners are concerned.

8. In the light of the above observations, FIR in Crime No.85 of 2018 on the file of the respondent police stands quashed. This Criminal Original Petition stands allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

sm

To

1.The Inspector of Police,
New Town Police Station, Cuddalore.

2.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.Bharathi, Advocate SR.No.78607

Cr1.O.P.No.23839 of 2019

VG I (CO)
GMY (06/02/2020)



WEB COPY