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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.08.2021**

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGOVAN**

Crl.O.P. (MD) No.10924 of 2021

and

Crl.M.P. (MD) No.5575 of 2021

1.Karuppasamy

2.Karthick @ Karthick Raja

... Petitioners

Vs.

1.The State represented by
The Inspector of Police,
Virudhunagar East Police Station,
Virudhunagar District.
Crime No.41 of 2018

2.Sivarajapandian

. .. Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the First Information Report in Crime No.41 of 2018 on the file of the 1st respondent police and quash the same.

For Petitioners : Mr.J.Vishnu

For R1 : Mr.R.M.Anbunithi
Additional Public Prosecutor (Crl.Side)

ORDER

This Criminal Original Petition is filed seeking a direction to quash the First Information Report in Crime No.41 of 2018 on the file of the 1st respondent police.

2.Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor (Crl.Side) for the 1st respondent.

3.The case of the prosecution is that on 24.01.2018, the petitioners and others have been staging a road roko agitation demanding of reducing the bus tickets fare. Hence, a case in Crime No.41 of 2018 for the offences punishable under Sections 143, 188 and 290 of IPC has been registered. The petitioners herein are arrayed as accused Nos.3 and 12. The present petition is filed to quash the First Information Report in Crime No.41 of 2018.

4.A perusal of the FIR shows that the petitioners along with



other persons have been staging a road roko near the place of occurrence demanding reduction of bus tickets fare. So, on the basis of the complaint given by the 2nd respondent, a case has been registered for the offences punishable under Sections 143, 188 and 290 of IPC in Crime No.41 of 2018.

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5.The fact remains that for the offences punishable under Section 188 IPC, the police officer has no power to register First Information Report and investigate the matter without proper permission from the concerned Jurisdictional Magistrate. It is seen that the offence under Section 188 IPC is non cognizable offence, in respect of which, First Information Report has been filed by the police and this position has been settled by this Court in the judgment reported in **2018 2 LW (crl) 606 Jeevanandham and other Vs. Inspector of Police, Sivakasi Town Police Station, Virudhunagar District]**, dated 20.09.2018, wherein it was held that no such power is available to the police officers and series of directions have been issued to deal with such cases. On this ground, First Information Report registered under Section 188 IPC is liable to be quashed.

6.Insofar as Section 143 of IPC is concerned, it must be shown that there is unlawful assembly as defined under Section 141 of IPC. Section 141 of IPC reads as follows:-

"141. Unlawful assembly:- An assembly of five or more persons is designated an **"unlawful assembly"**, if the common object of the persons composing that assembly is

First:- To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

Second:- To resist the execution of any law, or of any legal process; or

Third:- To commit any mischief or criminal trespass, or other offence; or

Fourth:- By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth:- By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do or to



omit to do what he is legally entitled to do.”

7.A reading of the FIR shows that the case has been registered under Section 143 IPC also. But none of the ingredients as defined under Section 141 of IPC will attract against the petitioners and others. It is not an unlawful assembly and the demand is also not unlawful in nature. In a democratic country, the freedom of expression is well recognised. A reading of the FIR shows that road block did not turn violent. So, that cannot be considered as unlawful assembly. Similarly, insofar as Section 290 of IPC is concerned, the ingredients must be satisfied, but reading of the FIR does not satisfy the ingredient of Section 290 of IPC also. It appears that it is a spontaneous protest that has been made by the students and because of this, the future of the petitioners should not be spoiled.

8.In view of the above, I am of the considered view that the First Information Report in Crime No.41 of 2018 on the file of the first respondent police is required to be quashed and accordingly, the same is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Inspector of Police,
Virudhunagar East Police Station, Virudhunagar District.

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

CrI.O.P. (MD)No.10924 of 2021
09.08.2021

RD(25.08.2021) 3P 3C