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CrI.O.P.No.15227 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.07.2022

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

CrI.O.P.No.15227 of 2022

M.Abuthahir

... Petitioner

Vs.

1. The Inspector of Police
Kuttalam
Mayiladuthurai District

2.Pragash

... Respondents

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in Cr.No.288 of 2018 pending on the file of the respondent for the offences under Sections 143 and 341 IPC with respect to the petitioner only quash the same.

For Petitioner : Mr.S.N.Subramani

For Respondent-1 : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings against the petitioner in Crime No.288 of 2018 pending on the file of the respondent police for the offences under Sections 143 and 341 IPC.



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2. The allegation in the FIR indicates that on 10.10.2018, the petitioner along with some other persons conducted agitation seeking to improve the Melagaram Railway Station and also demanded the Express Train Stop in the Melagaram Junction. Thereby, the petitioner has committed the offences under Sections 143 and 341 of I.P.C.

3. The learned counsel for the petitioner submitted that the prosecution has been launched with false allegations and even when the entire prosecution case taken as a face value, the same would not constitute any offence and continuing the prosecution is nothing but abuse of process of law. He would further submit that for the past five years, no enquiry is conducted and no final report is filed by the respondent police. In the meanwhile, the respondent police has registered another false case against the petitioner as if the petitioner along with others assembled near a Ration Shop and demanded good quality rice during Covid period and subsequently included the petitioner's name in History Sheet No.440/2021. Hence, he seeks to quash the proceedings in the Crime No.288 of 2018.



4. The Learned Additional Public Prosecutor (Criminal Side) submitted that the accused unlawfully assembled and caused disturbance to the public, thereby, he has been prosecuted.

5. It is to be noted that while exercising the power under Section 482 of Cr.P.C, the Court should be slow, at the same time, if the Court finds that from the entire materials collected by the prosecution taken as a whole, would not constitute any offence, in such situation, directing the parties to undergo ordeal of trial will be a futile exercise and it will infringe the right of the persons and in this regard, the Apex Court in **State of Haryana and others Vs. Bhajan Lal and Others** reported in **1992 Supp (1) Supreme Court Cases 335**, has been held as follows :

'.....

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;



(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.'

6. It is also relevant to note the definition of Unlawful Assembly:
'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 -



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(i) 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

(ii) to resist the execution of any law, or of any legal process; or

(iii) to commit any mischief or criminal trespass, or other offence; or

(iv) 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

(v) 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. Only when the assembly fit into any of the above circumstances, it could be construed as unlawful. The materials collected by the prosecution do not show that the accused had shown any criminal force to commit any mischief, crime or any offence or by way of criminal force or tried to take possession of the property or right to use of incorporeal right which is in possession of enjoyment of others or rights.



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8. Similarly, it is not the case of the prosecution that the accused had assembled to commit any offence. When the prosecution prima facie failed to establish that the assembly of five or more persons with a common object to commit any offence or any of the circumstances shown under Section 143 IPC, mere assembly of more than five persons cannot be construed that there is an unlawful assembly. Therefore, when the people gathered to show the protest in a democratic way, such a protest, in the absence of any ingredients of offence under Section 143 IPC, cannot be construed as unlawful assembly.

9. Even as per the FIR, it is not the case of the defacto complainant/the Village Administrative Officer that the petitioner along with others wrongfully restrained the defacto complainant/the Village Administrative Officer and hence, the offence under Section 341 of IPC is not attracted.

10. Considering the above, this Court is of the view that mere launching of FIR by the prosecution itself is not sufficient to reach to the conclusion that offences are made out and the materials collected by the prosecution do not support for proving the case and continuing the prosecution on shaky or without any materials is clear abuse of process of law.



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11. Accordingly, this Criminal Original Petition is allowed and proceedings against the petitioner in Crime No.288 of 2018 on the file of the respondent police is quashed.

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N. SATHISH KUMAR,J.

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To

1. The Inspector of Police
Kuttalam
Mayiladuthurai District
2. The Public Prosecutor,
Madras High Court,
Chennai.

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