



CrI. O.P. No.14692 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.06.2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Criminal Original Petition No.14692 of 2022 &

CrI.M.P.Nos.8138 & 8139 of 2022

1. Balakrishnan
2. Mutharasan

... petitioners

Vs

1. The State rep. by
The Sub Inspector of Police,
F-1, Chintadripet Police Station
Chennai – 2.

2. M.Varadharasu
Special Sub Inspector of Police,
F-1, Chintadripet Police Station
Chennai – 2.

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records in C.C.No.8 of 2022 on the file of the Special Court of MPs, MLAs, Singaravelar Maligai, Chennai and quash the same in respect of the petitioners [A-3, A-4].



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For petitioners ... Mr.R.Thirumoorthy

For Respondents ... Mr.A.Gokulakrishnan
Additional Public Prosecutor - R1

ORDER

This Criminal Original Petition has been filed to quash the case in C.C.No.8 of 2022 on the file of the Additional Sessions Judge, Additional Special Court for Trial of Criminal Cases relating to MPs, MLAs, Chennai for the offences under sections 143 and 269 of IPC and section 41[6] of Tamilnadu City Police Act, 1888

2. The allegation in the Final Report is that when the prohibitory orders were in force, the petitioners, during COVID pandemic, along with other accused unlawfully assembled near Tharappor Tower and raised slogans against the Central Government to withdraw 3 farm laws and further have certain demands to the Central Government found in the street, and thereby, the petitioners along with other accused were charged under sections 143 and 269 of IPC and section 41[6] of Tamilnadu City Police Act, 1888.



3. The learned Additional Public Prosecutor submitted that the accused unlawfully assembled without any prior permission and thereby, First Information has been registered against them.

4. Heard Mr.R,Thirumoorthy, learned counsel appearing for the petitioners and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent.

5. It is to be noted that while exercising power under Section 482, 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



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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



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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 -

(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.

8. Similarly, the petitioners along with other accused have been charged for an Offence under Section 269 of the Indian Penal Code on the ground that the accused unlawfully assembled when the spread of COVID 19 was at its peak, unmindful of the fact that they may catch COVID and may be a carrier for COVID 19. To attract an offence under section 269 IPC, only when the accused are likely to spread the infection of any disease dangerous to life, they shall be prosecuted under this section. It is not the case of the prosecution that the accused is already infected with COVID 19 or their assembly in the public place would likely to spread the disease and hence, the offence under section 269 IPC also shall not be attracted against the accused. Further, there are no materials available to show that there was regulation for any procession and hence, the other offence under section 41[6] g of the Madras City Police Act is also not attracted.



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9. In such a view of the matter, continuing the prosecution is a futile exercise and if the entire allegation in the Final Report is taken together, it would not constitute any offence and hence, this Court is of the considered view to quash the case in C.C. No.8 of 2022, on the file of the Special Court of MPs, MLAs, Chennai.

10. Accordingly, this Criminal Original Petition is allowed and the case in C.C. No.8 of 2022, on the file of the Additional Sessions Judge, Additional Special Court for Trial of Criminal Cases relating to MPs, MLAs, Chennai, is quashed as against the petitioners. Consequently, connected miscellaneous petitions are closed.

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vrc

Index : Yes / No

Internet: Yes

Speaking/non speaking order



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To

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1. The Special Court of MPs, MLAs,
Singaravelar Maligai, Chennai
2. The Sub Inspector of Police,
F-1, Chintadripet Police Station
Chennai – 2.
3. The Public Prosecutor
High Court
Madras.



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N. SATHISH KUMAR, J

VTC

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