



WEB COPY



CrI. O.P. No.15046 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.15046 of 2022 &

CrI.M.P.Nos.8412 & 8410 of 2022

Thol. Thirumavalavan

... Petitioner

Vs

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

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C. to quash the criminal charge as against the petitioner/A1 in C.C.No.8 of 2022 pending on the file of the Additional Sessions Judge, Additional Special Court for Trial of Criminal Cases relating to MPs, MLAs, Singaravelar Maligai, Chennai – 600 001.

For Petitioner ... Mr.K.Balakrishnan

For Respondent ... Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the case in



Crl. O.P. No.15046 of 2022

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 petitioner, 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 petitioner 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.K.Balakrishnan, learned counsel appearing for the petitioner and Mr.A.Gokulakrishnan, learned Additional Public Prosecutor appearing for the respondent.



WEB COPY

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 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;



WEB COPY



Crl. O.P. No.15046 of 2022

(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 -



(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 petitioner 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.

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



CrI. O.P. No.15046 of 2022

Special Court for Trial of Criminal Cases relating to MPs, MLAs, Chennai, is quashed. Consequently, connected miscellaneous petitions are closed.

28.06.2022

vrc

Index : Yes / No

Internet: Yes

Speaking/non speaking order

To

1. The Additional Sessions Judge,
Additional Special Court for Trial of Criminal
Cases relating to MPs, MLAs,
Chennai.
2. The Sub Inspector of Police,
F-1, Chintadripet Police Station
Chennai – 2.
3. The Public Prosecutor
High Court
Madras.



WEB COPY



Crl. O.P. No.15046 of 2022

N. SATHISH KUMAR, J

VTC

Crl. O.P. No.15046 of 2022

28.06.2022