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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 01.07.2022

Coram:

THE HONOURABLE **MR.JUSTICE N.SATHISH KUMAR**

Crl.O.P.(MD)No.11874 of 2022
and Crl.M.P.(MD)Nos.7513 & 7514 of 2022

G.K.Vasan ... Petitioner

Vs.

1. The State Rep. by
The Inspector of Police
Thuckaley Police Station
Kanyakumari District
(Crime No.414/2021)

2.Sathya Raj
Static Officer
Flying Squad A swift officer
No.232, Padmanabhapuram
Kanyakumari District ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to S.T.C.No465 of 2021 on the file of the learned Judicial Magistrate No.I, Nagercoil in connection and quash the same.

For Petitioner : Mr.E.V.Chandru

For Respondents : Mr.A.Gokulakrishnan
Additional Public Prosecutor for R1

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ORDER

This Criminal Original Petition is filed under Section 482 of Criminal Procedure Code to call for the records pertaining to S.T.C.No465 of 2021, in Crime No.414 of 2021, for the offence u/s.143, 188 I.P.C., on the file of the learned Judicial Magistrate No.I, Nagercoil in connection and quash the same.

2. The allegation in the final report is that on 05.05.2016, the petitioner, who is the State President of Tamil Manila Congress, without permission from election officer, has canvassed votes for the MDMK candidate for Pamanabhapuram Constituency) near Udaiyarvilai Verkilambi at Nagercoil-Thiruvanthapuram Highway, thereby, there was heavy traffic and disturbance to the public. Hence, an F.I.R. in Crime No.414 of 2021came to be registered against the petitioner and the other accused for the offence u/s.143 and 188 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

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the prosecution is nothing but abuse of process of law. Therefore, submitted that the same may be quashed.

4.Learned Additional Public Prosecutor 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, 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;*

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(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-

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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

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or right to use of incorporeal right which is in possession of enjoyment of others or rights.

8. Similarly, it is not the case of the prosecution that the accused has 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 141, mere assembly of more than five persons cannot be construed that there is an unlawful assembly. Therefore, when the people gathered to canvass votes in a democratic way, such a canvass, in the absence of any ingredients of offence under Section 143 cannot be construed as unlawful assembly.

9. Similarly to attract the offence under Section 188 there must be disobedience to order duly promulgated by the public servant. In this case there is evidence available to show that the accused has assembled to resist or execution of any law and there is no whisper whatsoever available in the First Information Report or in the other materials to show that there were promulgation or there were any prohibitory order existed at the relevant point of time. In this regard it is

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relevant to refer to a judgment of a Division Bench of this Court in **Moogambigai S.Thirugnanasammantham and others Vs. State rep. by the Inspector of Police, Karur** reported in **2021 0 Supreme [Mad] 555**, wherein it has been held as follows:

> *'....*
>
> *(9) When the allegations in the FIR and the materials collected by the prosecution does not disclose the commission of any offence and make out a case against the accused and the prosecution itself is instituted with an ulterior motive for wreaking vengeance, this Court can exercise power under Section 482 Cr.P.C. with regard to quashing of the charge sheet for the offence under Section 188 IPC, this Court in Jeevanandam and others Vs. State rep. by the Inspector of Police reported in 2018-2-L.W.(Crl) 606 has relied a judgment in V.Gowthaman and others Vs. State rep. by its Inspector of Police, St.Thomas Mount Police Station, Chennai reported in '2018 (4) CTC 252' and held that the cognizance taken by the Magistrate under Section 188 IPC is not permissible and therefore, the prosecution of the accused under Section 188 IPC stands quashed.'*

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10. Considering the above, this Court is of the view that mere launching of final report 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.

11. Accordingly, this Criminal Original Petition is allowed and proceedings against the petitioner in S.T.C.No.465 of 2021 on the file of the learned Judicial Magistrate No.I, Nagercoil is quashed. Consequently, the connected miscellaneous petitions are closed.

01.07.2022

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Index : Yes
Internet : Yes
Speaking Order

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To

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4.The Public Prosecutor
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