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CrI.O.P.No.14759 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.09.2022

CORAM:

THE HONOURABLE MS JUSTICE R.N.MANJULA

CrI.O.P.No.14759 of 2021
and CrI.M.P.No.8022 of 2021

Mohamed Lathifullah

...Petitioner

Vs.

State Rep. by
Sub Inspector of Police,
H-1 Washermanpet Police Station,
Chennai.
(Crime No.176 of 2020)

... Respondent

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in Crime No.176 of 2020 dated 29.02.2020 on the file of the respondent police and quash the same.

For Petitioner :Mr.A.Raja Mohamed

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to call for the records relating to the case in Crime No.176 of 2020 on the file of the respondent Police and to quash the same as illegal.



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2. The petitioner is the 3rd accused in the case registered in Crime No.176 of 2020. The case has been registered by the respondent against the petitioner on the allegation that the petitioner along with other accused were assembled and participated in a Dharna against the CAA enacted by the Parliament and protested in the public road without any prior permission. Subsequently, FIR has been registered in Crime No.176 of 2020 on 29.02.2020 for the offences under Sections 143, 145, 147, 290 of I.P.C., and Sections 41, 71 A (1) of the Tamilnadu City Police Act, 1888 and Section 4B of the Tamilnadu Open Places (Prevention of Disfigurement) Act, 1959.

3. The learned counsel for the petitioner submitted that the role of the petitioner in the protest was not mentioned in the FIR and there is no ingredients to show that the petitioner has committed the offences under Sections 143, 145, 147, 290 of I.P.C., and Sections 41, 71 A (1) of the Tamilnadu City Police Act, 1888 and Section 4B of the Tamilnadu Open Places (Prevention of Disfigurement) Act, 1959. The registration of the FIR is in violation of Section 195(1)(a)(i) of Cr.P.C; the allegations made in the



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FIR does not disclose any cognizable offence; the right of the petitioner to assemble peacefully without any arms in order to show dissenting voices cannot be construed as a criminal activity; hence, this Court has to invoke its provisional power and quash the proceedings.

4. The learned Additional Public Prosecutor submitted that on 29.02.2020 at 10.00 p.m, the police got an information that the accused were assembled together illegally; though they were warned by the police, they did not disperse, but continued to stay and caused obstruction to the traffic and disturbance to the general public.

5. On the face of the FIR itself, no specific overtact is seen on the part of the petitioner that he was doing certain acts which would endanger the life and personal safety of others. The petitioner was seen to have assembled for protesting and condemning the arrest of Senior Journalists and others for participating in the Anti-CAA, NRC Protest.

6. The '*unlawful assembly*' is defined under Section 141 IPC as under:



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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. A reading of the FIR does not disclose that the petitioner along with other accused were assembled with any common object of committing the acts enunciated under Section 141 IPC. Without any sufficient materials to show that the petitioner had assembled in an unlawful manner, they cannot be punished for the offence under Section 143 of IPC. In fact, when the



ground offence (i.e) unlawful assembly itself does not have any material to get substantiated, the rest of the offences will not stand. There is no allegation that the petitioner had committed any act of violence. The entire materials produced before this Court are found to be not satisfactory to make out the above stated various offences against the accused.

8. In the case of ***State of Haryana and others Vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) Supreme Court Cases 335***, the Hon'ble Supreme Court has held that when the FIR itself does not disclose any cognizable offence which would justify an investigation, there is no necessity for investigation. In that case, the Courts can very well invoke the powers under Section 482 of Cr.P.C to quash the FIR. In this regard, it is relevant to extract the relevant portions of the judgment of the Hon'ble Supreme Court held in the case of ***State of Haryana and others Vs. Bhajan Lal and Others***. The relevant portion is extracted hereunder:

“

(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 on



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the accused and with a view to spite him due to private and personal grudge”.

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9. It is reliably learnt that the Government has taken proactive steps to drop the cases registered against the petitioner, during the pandemic, in the public interest. In such circumstances, I feel that no fruitful purpose will be served in allowing the investigation in a case which is bald and trivial. The materials available on record are not sufficient to make out a case for which the petitioner has been charged with. Hence, I feel it is appropriate to quash the proceedings by invoking the powers of this Court under Section 482 of Cr.P.C.

10. Accordingly, this Criminal Original Petition stands allowed and the FIR in Crime No.176 of 2021 on the file of the respondent is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

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vum
Index:yes/No
Speaking order / Non speaking order

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R.N.MANJULA,J.

vum

To

- 1.The Sub Inspector of Police,
H-1 Washermanpet Police Station,
Chennai.
2. The Public Prosecutor,
Madras High Court,
Chennai.

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