



CrL.O.P(MD).No.16561 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:15.9.2022

CORAM:

THE HON'BLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

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and

CrI.M.P.No.11046 of 2022

1.A.R.R.Seenivasan
S/o. Raju Naicker,
D/no.1/94 Alagapuri Village,
Mesalur Post, Virudhunagar District.
(MLA, Virudhunagar Constituency,
Virudhunagar District.)

2.Dhanapal
S/o. Thangaiya Nadar,
Muthuramanpatti,
Virudhunagar Town,
Virudhunagar District.
(DMK Town Secretary
Virudhunagar Town,
Virudhunagar District)

3.Mathialagan
S/o. Ponnaiya
Indra Nagar,
Virudhunagar Town,
Virudhunagar District.



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4.Kothandaraman

S/o. Singappa reddyar
Ramasamy Westcar Street,
Virudhunagar Town,
Virudhunagar District.

... Petitioners

Vs.

1.The State rep by

The Sub Inspector of Police,
Virudhunagar West Police Station,
Virudhunagar District
(Crime No.736 of 2020).

2.Parthiban,

The Sub Inspector of Police,
Virudhunagar West Police Station,
Virudhunagar District.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records relating to the proceedings of First Information Report in Crime No.736 of 2020 pending on the file of the 1st respondent police and quash the same in respect of petitioners/Accused No.1 to 4 herein.

For Petitioners : Mr.S.Agilesh Kumar

For RR1 : Mr.E.Raj Thilak
Additional Public Prosecutor



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ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.736 of 2020 on the file of the first respondent, thereby having been taken cognizance for the offences under Sections 143, 341, 290 and 270 of I.P.C. as against the petitioners.

2. The case of the prosecution is that on 07.12.2020, around 10.20 a.m, the petitioner along with other accused involved democratic agitation conducted by DMK political party to condemn the violent and obscene talks of erstwhile Minister for Dairy, without getting prior permission from the concerned authority. On the basis of the above said allegation, the respondent police registered the complaint and filed a charge sheet against the petitioner and others for the offences under Sections 143, 341, 290 and 270 of I.P.C in Crime No.736 of 2020, on the file of the first respondent.

3. The learned counsel appearing for the petitioners would submit that the petitioners are innocent person and they have not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.736 of 2020 for



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the offences under Sections 143, 341, 290 and 270 of IPC as against the petitioners. Hence he prayed to quash the same.

4. Per contra, the learned Additional Public Prosecutor submitted that the petitioners along with other accused involved democratic agitation conducted by DMK political party to condemn the violent and obscene talks of erstwhile Minister for Dairy, and there are specific allegations as against the petitioners to proceed with the trial. Therefore, he vehemently opposed the quash petition and prayed for dismissal of the same.

5. Heard Mr.S.Agilesh Kumar, learned counsel for the petitioners and Mr.E.Raj Thilak, learned Additional Public Prosecutor appearing for the first respondent.

6. On perusal of the charge, it is seen that petitioner along with other accused involved democratic agitation conducted by DMK political party to condemn the violent and obscene talks of erstwhile Minister for Dairy, without getting prior permission from the concerned authority. Therefore, the respondent police levelled the charges under Sections 143, 341, 290 and 270 of I.P.C. as against the petitioners and others.



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7. 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;*

(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;*



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(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



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

8. 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



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(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.-

9. In the case on hand, the First Information Report has been registered by the first respondent police for the offences under Sections 143, 341, 290 and 270 of IPC. Further, the complaint does not even state as to how the protest formed by the petitioners and others is an unlawful protest and does not satisfy the requirements of Sections 143, 341, 290 and 270 of IPC. Therefore, the FIR cannot be sustained and it is liable to be quashed.

10. Accordingly, the proceedings in Crime No.736 of 2020 on the file of the first respondent, is hereby quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

15.9.2022

Index : Yes / No
Internet : Yes / No
Speaking/Non-speaking order
vsn



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G.K.ILANTHIRAIYAN, J.

vsn

To

1. The State rep by
The Inspector of Police,
Virudhunagar West Police Station,
Virudhunagar District
2. The Public Prosecutor,
High Court, Madras.

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and CrI.M.P.No.11046 of 2022

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