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Crl.O.P.No.27863 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.O.P.No.27863 of 2022
and Crl.MP.No.17175 of 2022

Balaguru

... Petitioner

Vs.

The State rep.by
The Inspector of Police,
J4-Kotturpuram Police Station,
Chennai 600 004.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C.
praying to call for the records and quash the Crime No.436 of 2019
pending before the Inspector of Police, J4 Kotturpuram Police Station,
Chennai.

For Petitioner : Mr.C.Ganesh Pandian

For Respondent : Mr.S.Santhosh
Govt. Advocate (Crl. Side)



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ORDER

This Criminal Original Petition has been filed to call for the records and quash the Crime No.436 of 2019 pending before the Inspector of Police, J4 Kotturpuram Police Station, Chennai.

2. The case of the prosecution is that on 06.12.2019 at about 11:00 a.m. in Sardar Patel road, the petitioner along with 57 others without getting permission from the respondent police raised slogans against the provision of Hindi language training at the World Tamil Research Institute near Central Kailash Junction. Hence the respondent police Suo motu gave a complaint on 06.12.2019 based on that the respondent police registered a case against the petitioner in Crime No.436/2019 for the offences under Sections 143, 145 IPC and 41 of TN City Police Act, 1888.

3. The learned counsel appearing for the petitioner submitted that the petitioner has not participated in the protest condemning against the provision of Hindi language training at the World Tamil Research



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Institute near Central Kailash junction. He further submitted that the prosecution has been launched with false allegations and even the entire prosecution case has been taken as a face value, the same would not constitute any offence and continuing the prosecution is nothing but abuse of process of law. Therefore, submitted that the same may be quashed.

4. The Learned Government Advocate (Criminal Side) submitted that the accused unlawfully assembled without any prior permission and thereby caused disturbance to the public and hence First Information has been registered and the case is under investigation.

5. It is to be noted that while exercising the power under Section 482 of Cr.P.C., 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



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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;

(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



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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



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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, 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 Sections 143, 145 IPC mere assembly of more than five persons cannot be construed that there is an unlawful assembly. Therefore, when



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the people gathered to show the protest in a democratic way, such a protest, in the absence of any ingredients of offence under Sections 143, 145 IPC & 41 of TN City Police Act, 1888 is also cannot be construed as unlawful assembly.

9. 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.

10. Accordingly, this Criminal Original Petition is allowed and the First Information Report registered in Crime No.436 of 2019 on the file of the respondent police as against the petitioner is quashed. Consequently, connected miscellaneous petition is closed.

15.11.2022

Speaking/Non speaking order
dpq



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V. SIVAGNANAM, J.

dpq

To

- 1.The Inspector of Police,
J-4, Kotturpuram Police Station,
Chennai - 600 004.
- 2.The Public Prosecutor,
High Court of Madras.

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