



Crl.O.P.No.29259 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2022

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THE HONOURABLE MS.JUSTICE R.N.MANJULA

Crl.O.P.No.29259 of 2022
and Crl.M.P. Nos.17912 & 17915 of 2022

Anbarasu

... Petitioner

Vs.

1. The State rep. by its,
The Inspector of Police,
F-3, Nungambakkam Police Station,
Chennai – 600 034.

2. Vinoth Kumar

... Respondents

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records culminating in the chargesheet in C.C. No.8253 of 2019 pending on the file of the XIV Metropolitan Magistrate at Egmore and quash the same.

For Petitioner : Mr.Ali Hassan Khan

For Respondent 1 : Mr.E.Raj Thilak,
Additional Public Prosecutor



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ORDER

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This petition has been filed to call for the records culminating in the charge sheet in C.C. No.8253 of 2019 pending on the file of the XIV Metropolitan Magistrate at Egmore and quash the same.

2. The petitioner is the second accused. A case has been registered by the first respondent against the petitioner on the allegation that the petitioner along with other accused assembled and participated in a protest against the common board exam for 5th and 8th standard in front of the DPI complex and protested in the public road without any prior permission. On the basis of which, FIR has been registered in Cr. No.938/2019 for the offences under Section 143 IPC, Section 41 of Tamil Nadu City Police Act, 1888. After investigation, charge sheet has been filed in C.C. No.8253/2019 for the offences under Section 143 IPC, Section 41 of Tamil Nadu City Police Act, 1888 and Section 7(1)(a) of Criminal Law Amendment Act, 2005.



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 I.P.C., and Section 41 of Tamil Nadu City Police Act, 1888 and 7(1) A of the Criminal Law Amendment Act; the allegations made in the complaint 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 16.09.2019, the police got an information that the accused 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 complaint 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 against the common board exam for 5th and



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8th standard.

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

“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 complaint does not disclose that the petitioner along with other accused 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



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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.

8. In so far as Sections 41 of Tamilnadu City Police Act, 1888 is concerned, this Court in the judgment of ***Mohamed Lathifull and another vs. State rep. by the Inspector of Police in CRL.O.P.No.16416 of 2021*** has held as under:

“ As far as Section 41(vi) of Police Act is concerned, the power conferred on the Commissioner under Section 41 of the Madras City Police Act is sweeping and that power is meant to be exercised with great care and caution. The Madras City Police Act is a pre-Constitution enactment and the powers conferred on the authorities at a time when the country was under the colonial regime and during the period when suppression of dissent was considered to be a legitimate policy of the State, cannot be exercised after the enactment of the Constitution in the same manner, as it was exercised earlier. This Court in W.P.No.2817 of 2014 M.Durairaj Vs. The Superintendent of Police, in its order dated 05.02.2014 observed the following:

“The Intelligent Report placed before the Court shows that the police still have the attitude which does not seem to recognize that the country is a democratic nation, where every citizen has a right to full and equal participation in the process of Government. No citizen can be regarded as an enemy of the State merely because he has voiced a view which is not the



one favoured by those in authority. The fact that the police are vested with power should not make them assume that, that power is available for exercise in any manner that they consider fit. That power is to be exercised strictly within the ambit of the provisions of the Constitution, more particularly, the requirement that any restriction placed on the exercise of fundamental rights should be a reasonable restriction and the restrictions so placed should be shown to be essential, having regard to the permissible purpose for which restrictions may be imposed. The authorities ought not to have refused permission mechanically, they should be in a position to satisfy the Court that such refusal falls strictly within the ambit of the permissible grounds for restricting the exercise of fundamental rights under [Article 19](#) of the Constitution. A mere apprehension that some disturbance may be caused in the meeting place would not be sufficient. Under Section 41 of the Madras City Police Act, the police have power to depute one or more police officers to be present at the meeting. If, at the meeting, such police officers were to find that anything illegal was being done, it would be open to them to take such further action as may be considered necessary in the circumstances. A blanket order refusing to permit the meeting to be held is not the method of relating the exercise of fundamental rights of freedom of speech, expression and assembly”.

9. It is an admitted fact that the petitioner had participated in the protest with other accused and expressed their dissent. This is a democratic right. There was no commotion in the crowd and the petitioner did not endanger the life of any persons or property. There is no allegation that the



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petitioner had committed any act of violence and no public got affected due to the protest. The entire materials produced before this Court are found to be not satisfactory to make out the case as alleged by the prosecution. Hence, I feel it is appropriate to quash the proceedings against the petitioner.

10. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C. No.8253/2019 is quashed as against the petitioner. Connected miscellaneous petition is closed.

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R.N.MANJULA,J.

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To

1. The Inspector of Police,
F-3, Nungambakkam Police Station,
Chennai – 600 034.

2.The Public Prosecutor,
High Court, Madras.

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