



Crl.O.P.No.3107 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.02.2023

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THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.3107 of 2023

and

Crl.M.P.No.1848 of 2023

Kalesha

... Petitioner

Vs.

State represented by,
The Sub-Inspector of Police,
Walajabad Police Station,
Kancheepuram.

(Crime No.627 of 2020)

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C.,
pleaded to call for the records in Crime No.627 of 2020 dated 16.05.2020 on the
file of the respondent Police and quash the same as against the petitioner.

For Petitioner : Mr.K.Ezhumalai

For Respondent : Mr.S.Santhosh
Government Advocate(Crl.side)



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ORDER

This Criminal Original Petition has been filed seeking to quash the First Information Report in Crime No.627 of 2020 pending on the file of the respondent police.

2. Learned counsel for the petitioner submitted that the petitioner had participated in a protest against the Government in a peaceful manner without causing any disturbance or indulging in any violence. However, a case in Crime No.627 of 2020 for the offence under Sections 143, 188, 341 and 270 of IPC r/w Section 51(1)(b) of Disaster Management Act, 2005 was registered against the petitioner and the final report was not filed in this case so far. Hence he prays to quash the First Information Report registered against the petitioner on merits.

3. In response the learned Government Advocate (Crl.Side) submitted that the petitioner and the other accused had unlawfully assembled and raised slogans against the Government. When the protest was conducted, there was a ban on public gathering due to spread of COVID 19. Therefore a case in Crime No.627



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of 2020 was registered by the respondent Police for the offence under Sections 143, 188, 341 and 270 of IPC r/w Section 51(1)(b) of Disaster Management Act, 2005. He further submitted that the final report in this case was not filed so far. Thus, he prayed for dismissal of this petition.

4. Considered the rival submissions and perused the records. It is seen from the allegations made in the First Information Report that on 16.05.2020, near Mosque at Yeganampet Village, the accused had unlawfully assembled and raised slogans against the Central Government to save the Minority people at the time of spread of pandemic disease like COVID -19.

5. This Court in Crl.O.P.No.23022 of 2022 while dealing with quashing of case registered under Section 143 & 341 IPC observed that if the unlawful assembly confirms to the definition of unlawful assembly as defined under Section 141 IPC, the member of unlawful assembly can be prosecuted under Section 143 IPC. 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

(v) by means of criminal force, or show of criminal force, to compel any person to do what he is



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*not legally bound to do, or to omit to do what he is
legally entitled to do.-*

6. In the case before hand, there is no specific allegations against the petitioner or any of the member of the unlawful assembly that they used criminal force with a common object of overawe the Central or State Government, resisted the execution of any law or of any process, committed any mischief or criminal trespass, take possession of any property, deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right, compelled any person to do what he is not legally bound to do or to omit to do what he is legally entitled to do. In the absence of specific allegations in this regard, it is no doubt that the alleged assembly cannot be considered as unlawful assembly and the members of alleged unlawful assembly cannot be prosecuted for the offence under Section 143 IPC. Similarly, there is no statement obtained from any member, individual or vehicle driver as to whether they were prevented or criminally resisted from proceeding further. Therefore, this Court is of the considered view that the ingredients for prosecuting the petitioner under Section 143 and 341 IPC are not made out and the continuation of trial would be a



harassment to the petitioner.

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7. Section 188 of IPC defines disobedience to order duly promulgated by public servant to spread infection as under:-

"188. Disobedience to order duly promulgated by Public Servant:

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."



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9. Further, with regard to the case registered under Section 270 of IPC, though the case was registered on 16.05.2020, there is no material produced so far that the petitioner had knowingly attempted to spread infection of any disease dangerous to life. And it is also not the case of the respondent that at the time of the incident, the petitioner was affected by Covid-19, so that gathering of accused in this case resulted in spread of COVID – 19.



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10. For obvious reasons, this Court is of the view that, proceeding further in this case would be an abuse of process of Law. Also, this Court finds that the present case was registered in the year of 2020 and till now, final report is not filed in this case. Even if final report is filed, there is no possibility of taking cognizance of the case as the offences are barred by limitation under Section 468 Cr.P.C. Therefore, this Court quashes the First Information Report registered against the petitioner in Crime No.627 of 2020.

11. Accordingly, this Criminal Original petition stands allowed. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No

Speaking/Non speaking order

Neutral Citation Case: Yes/No



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- To
1. The Sub-Inspector of Police,
Walajabad Police Station,
Kancheepuram.
 2. The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN,J.

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