



Crl.O.P.No.3968 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

DATED: 23.02.2023

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.3968 of 2023

and

Crl.M.P.Nos.2533 & 2534 of 2023

Nizam

... Petitioner

Vs.

1.State, by the Sub-Inspector of Police,
Salem Town Police Station,
Salem City.
(Crime No.443 of 2020)

2.Sekar

... Respondents

Prayer: This Criminal Original Petition filed under Section 482 of Cr.P.C.,
pleased to call for the records and quash all the proceedings in S.T.C.No.188
of 2023 on the file of the Judicial Magistrate No.I, Salem against the
petitioner.

For Petitioner : Mr.B.Vasudevan

For R1 : Mr.S.Santhosh
Government Advocate (Crl.Side)

For R2 : No appearance



Crl.O.P.No.3968 of 2023

ORDER

WEB COPY

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.188 of 2023 on the file of the learned Judicial Magistrate No.I, Salem against the petitioner.

2.The learned counsel for the petitioner submitted that the petitioner is prosecuted for the offences under Sections 143 and 269 of IPC in S.T.C.No.188 of 2023 on the file of the learned Judicial Magistrate No.I, Salem. The final report in this case was filed on 09.01.2023 and the same was taken cognizance on 10.01.2023, which is beyond the period of limitation. Therefore, this case is barred by limitation.

3.The learned Government Advocate (Crl.Side) appearing for the first respondent police submitted that the accused had distributed Nonbu Kanji when there was a spread of Covid-19 without taking any precautionary measures. Therefore, this case is filed.

4.I have considered the rival submissions made by the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) appearing for the first respondent police and perused the material records of the case.



Crl.O.P.No.3968 of 2023

5.It is seen from the final report that the accused are charged for the offences under Sections 143 and 269 of IPC alleging that on 02.05.2020 at about 14.30 hours at Lakshmi Nagar, Adhiyaman Street, the accused had distributed Nonbu Kanji to the public when there was a ban under Section 144 of Cr.P.C. That was the period when Covid-19 was spreading rapidly. Knowing fully well that if people assemble without any protection, there is a possibility of spread of Covid-19, the accused distributed Nonbu Kanji, therefore, he was prosecuted.

6.Only allegation against the petitioner/accused is that when there was a ban under Section 144 of Cr.P.C. during the Covid-19, to avoid the spread of Covid-19, accused without following any precautionary measures had distributed Nonbu Kanji to the public knowing that there is a possibility of spread of Covid-19.

7.This Court in Crl.O.P.No.23022 of 2022 while dealing with quashing of case registered under Section 143 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:

“141.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



Crl.O.P.No.3968 of 2023

WEB COPY

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

8. 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 IPC is not made out and the continuation of trial would be a harassment to the petitioner.

9. To convict a person under Section 269 of IPC, it must be established



Crl.O.P.No.3968 of 2023

that the act has a reason to believe that there is a likelihood of spread of infection of any disease dangerous to life, especially, Covid-19 by the members of unlawful assembly. In the present case, there is no material to show that any of the accused or the public were carrying Covid-19 infection and thus, was responsible for the spread of Covid-19.

10.In the said circumstances, this Court is of the considered view that the continuance of the proceedings against the petitioner would be only abuse of process of Court when there is no possibility of conviction in this case, therefore, keeping the case pending is not necessary.

11.In this view of the matter, this criminal original petition is allowed and as a sequel, the proceedings in S.T.C.No.188 of 2023 on the file of the Judicial Magistrate No.I, Salem is quashed. Consequently, the connected miscellaneous petitions are closed.

23.02.2023

Index:Yes/No
Speaking/Non speaking order
Neutral Citation Case : Yes \ No
sp



Crl.O.P.No.3968 of 2023

To

WEB COPY

- 1.The Judicial Magistrate No.I,
Salem.
- 2.The Sub-Inspector of Police,
Salem Town Police Station,
Salem City.
- 3.The Public Prosecutor,
High Court of Madras.



WEB COPY



Crl.O.P.No.3968 of 2023

G.CHANDRASEKHARAN.J.,

sp

Crl.O.P.No.3968 of 2023
and
Crl.M.P.Nos.2533 & 2534 of 2023

23.02.2023