



Crl.O.P.No.2476 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.2476 of 2023

&

Crl.M.P.No.1372 of 2023

Arthurkumar @ Malaravan

... Petitioner

Vs

1.State rep by.,
The Inspector of Police,
Peelamedu Police Station,
Coimbatore City,
Coimbatore – District.
(Crime No.1264 of 2021).

2.Rajkumar ... Respondents
PRAYER: Criminal Original Petition is filed under Section 482 of Criminal
Procedure Code, to call for the records relating to the F.I.R. in Crime
No.1264 of 2021 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.D.Veerasekaran

For Respondents : Mr.S.Santhosh (for R1)

Government Advocate (Crl.Side)



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ORDER

This petition has been filed to call for the records relating to First Information Report in Crime No.1264 of 2021 on the file of the 1st respondent and quash the same.

2. Learned counsel for the petitioner submitted that petitioner was participating in a protest against RSS organization seeking ban on the drill exercise, that being conducted by RSS organization at Dharma Sastha School, Coimbatore on 30.12.2021. However, the petitioner is falsely implicated in this case. Therefore, this petition.

3. Learned Government Advocate (Crl.side) submitted that petitioner along with other accused formed unlawful assembly, raised slogans against RSS and also caused disturbance to the traffic by criminally restraining the free flow of vehicle in public. Not only that, when the protest was conducted, there was a ban on public gathering due to spread of COVID – 19. Therefore, the First Information Report was registered against the petitioner and the other accused for the offence under Sections 143, 341 and 269 of IPC. Thus, the prayer for dismissal of this petition.

4. Considered the rival submissions and perused the records. It is seen from the First Information Report allegations that on 30.12.2021, the



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party men of Periyar Dravidar Kazhagam and Communist Party had staged protest in front of Dharma Sastha School, Coimbatore against conducting the drill training by RSS. This had happened at 8.10 P.M. on 30.12.2021. About 32 persons formed unlawful assembly and raised slogans against RSS movement, obstructed free flow of traffic, when there was 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



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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.-

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



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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 restrained 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.

7. With regard to the case registered under Section 269 of IPC, there is no material produced so far, though the case was registered on 30.12.2021, that gathering of accused in this case resulted in spread of COVID – 19.

8. For these reasons, this Court is of the view that, proceeding further in this case would be an abuse of process of Law. Therefore, this Criminal



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Original petition is allowed. The proceedings against the petitioner is quashed. Consequently, connected miscellaneous petition is closed.

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Index :Yes/No
Internet:Yes/No
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G.CHANDRASEKHARAN, J.

mpl

To

- 1.The Inspector of Police,
Peelamedu Police Station,
Coimbatore City,
Coimbatore – District.
- 2.The Public Prosecutor,
High Court of Madras.

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