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Crl.O.P.No.2484 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.2484 of 2023

and

Crl.M.P.Nos.1394 & 1396 of 2023

1.Dineshkumar

2.Kosalaraman

...

Petitioners

Vs.

1. The State of Tamil Nadu,
Represented by, The Inspector of Police,
Race Course Police Station,
Coimbatore City.
Crime No.197 of 2019

2. K.Rajinikanth

...

Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to call for the entire records pertaining to the case in S.T.C.No.4013 of 2019 on the file of the Judicial Magistrate No.III, Coimbatore and quash the same.

For Petitioner : Mr. R.Selva Kumar

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



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ORDER

WEB COPY This Criminal Original Petition is filed to call for the entire records pertaining to the case in S.T.C.No.4013 of 2019 on the file of the Judicial Magistrate No.III, Coimbatore and quash the same.

2.The learned counsel for the petitioner submitted that the petitioners are charged for the offences under Sections 143 and 341 IPC. It is further submitted that the petitioners have peacefully participated in a protest, which was conducted against the rape of a victim in pollachi. The protest was peaceful, no criminal force was used by either the petitioners or any of the members of the alleged unlawful assembly. There was no wrongful restraint either to the public or to the vehicles as alleged by the prosecution. Therefore, present petition is filed.

3.The learned Government Advocate (Crl.Side) opposed this petition and submitted that the witnesses had given statement that the petitioners and the other accused had unlawfully assembled and raised slogans against the Government preventing the free flow of the vehicles and movement of the public and therefore, trial has to be proceeded.



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4.Considered the rival submissions. This Court, on going through the records, found that the charges under Sections 143 and 341 IPC are made alleging that on 14.03.2019 at about 17.25 hours, the accused unlawfully assembled in front of the Coimbatore South Tahsildar Office, raised slogans against the rape case reported in Pollachi and in the course of the same transaction, they prevented the free flow of vehicles and movement of the general public. The list of witnesses shows that most of the witnesses are only police officers. It appears that no public or the driver of the vehicle, who were allegedly prevented by the alleged unlawful assembly was examined. Their statements were also not recorded.

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



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(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 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



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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 petitioners.

7.In this view of the matter, this Criminal Original Petition is allowed and the proceedings against the petitioners in S.T.C.No.4013 of 2019, on the file of Judicial Magistrate No.III, Coimbatore are quashed. Consequently, connected miscellaneous petitions are also closed.

08.02.2023

sma
Internet:Yes
Index:Yes/No
Speaking/Non speaking order



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To:

- 1.The Judicial Magistrate No.III,
Coimbatore.
- 2.The Inspector of Police,
C2-Race Course Police Station,
Coimbatore.
- 3.The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN, J.
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