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Crl.O.P.No.3874 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.3874 of 2023
and
Crl.M.P.Nos.2447 & 2448 of 2023

Gnanavel ... Petitioner

Vs.

State rep.by
Inspector of Police,
Thirukoilur Police Station,
Viluppuram District,
Crime No.482/2019. ... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to the charge sheet in S.T.C.No.574 of 2021 on the file of the Judicial Magistrate Court, Thirukoilur and quash the same.

For Petitioner : Mr.K.Gangadaran
For Respondent : Mr.S.Santhosh
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition is filed to call for the records pertaining to the charge sheet in S.T.C.No.574 of 2021, on the file of the Judicial Magistrate Court, Thirukoilur and quash the same.



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2.The learned counsel for the petitioner submitted that petitioner is prosecuted in S.T.C.No.574 of 2021, on the file of the Judicial Magistrate, Thirukoilur, for the offences under Sections 143, 188, 341 and 353 IPC.

3.The allegations is that petitioner along with the other accused formed unlawful assembly on 01.07.2019, at about 8.00 a.m., opposite to the Government Middle School, Padiyandhal village, staged a protest seeking to resolve their water crisis. During the course of protest, they prevented the private and Government buses from plying. When the police informed them about the promulgation issued under Section 30 (2) of the Police Act and asked them to give way to the traffic, they raised slogans against the police, pushed them and prevented the police from discharging their official duties.

4.It is the submission of the learned counsel for the petitioner that petitioner has not participated in the protest, but he was crossing that area to go to some other place. Thus, he was falsely roped in this case as an accused. He also produced the order passed by this Court in ***Crl.O.P.(MD) No.10932 of 2019 dated 20.01.2022*** and the order reported in ***CDJ 2018 MHC 5153 in Jeevanandham & Others Vs. State rep.by Inspector of Police, Karur***



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District & Another for the proposition that the registration of FIR is illegal and that without any material to support that the accused formed an unlawful assembly, charging the petitioner for such a peaceful protest to resolve their water crisis is not proper. It is his further submission that this case was registered by Sub Inspector Gunabalan, he investigated the case and filed a final report and that is not proper.

5.The learned Government Advocate (Crl.Side) submitted that petitioner along with the other accused is a member of the unlawful assembly and prevented the traffic and obstructed the police from performing their official duty.

6.Considered the rival submissions and perused the records.

7.It is seen from the records that witnesses are all police officials. No independent witness was examined with regard to the incident. The statement of the witnesses shows that bald allegations are made against the accused. No specific allegations are made against petitioner as to his role in the incident. With regard to Section 143, it must be established that the assembly must be



unlawful assembly and petitioner must be a member of that unlawful assembly. 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



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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.-

8.In the case before hand, there is no material or statement of the witnesses available to show that petitioner had involved in the commission of any of the aforesaid acts. There is also no specific allegation that petitioner had wrongfully restrained the police officials and prevented them from performing their official duties. With regard to the prosecution of a person for the commission of offence under Section 188 IPC, it is held in ***Jeevanandham & Others Vs. State rep.by Inspector of Police, Karur District & Another*** reported in ***CDJ 2018 MHC 5153*** that a police officer cannot register an FIR for any of the offences falling under Section 172 to 188 IPC.

9.In the case before hand, Sub Inspector Gunabalan had registered the case, investigated the case and filed the final report. This is also



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impermissible in law for the reason that there may not be any proper and fair investigation if the same person registers the case, investigates the case and files a final report. Thus, this Court is of the view that there is no ground made out for registering the case against the petitioner in Crime No.482 of 2019. Therefore, the proceedings in S.T.C.No.574 of 2021, on the file of the Judicial Magistrate Court, Thirukoilur, is liable to be quashed and accordingly quashed.

10.In this view of the matter, this Criminal Original Petition is allowed.

Consequently, connected miscellaneous petitions are also closed.

22.02.2023

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Internet:Yes

Index:Yes/No

Speaking/Non speaking order



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- To:
- 1.The Inspector of Police,
Thirukoilur Police Station,
Viluppuram District,
Crime No.482/2019.
 - 2.The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN, J.

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