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Crl.O.P.No.5076 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:06.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.5076 of 2023 and
Crl.M.P.Nos.3190 & 3192 of 2023

M.Naseema Banu

... Petitioner

Vs.

State represented by
Sub-Inspector of Police,
Kuthanallur Police Station,
Thiruvavarur – 614 101.
Cr.No.50 of 2022

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in S.T.C.No.355 of 2023 on the file of the learned Judicial Magistrate No.II, Mannarkudi and quash the same as against the petitioner.

For Petitioner : Mr.A.Raja Mohamed

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



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ORDER

This Criminal Original Petition has been filed to call for the records in S.T.C.No.355 of 2023 on the file of the learned Judicial Magistrate No.II, Mannarkudi and quash the same as against the petitioner.

2.The learned counsel for the petitioner submitted that the allegations in the Final Report are that on 06.03.2022 at about 19.05 hours, near Letchumangudi Main Road, the accused in this case that without obtaining prior permission obstructed the traffic opposing the arrest of i)Jahir Hussain, ii)Mohamed Jasmine, iii)Sadham Hussain, iv)Ahemedulla, v)Nasima Banu, vi)Abdul Latif & vii)Vilayath Hussain of SDPI Party. Reason for their arrest that they had not obtained prior permission for conducting the road roko; that this road roko was arranged and conducted during the spread of Covid-19 and that the accused had wrongfully restrained free flow of traffic and movement of the public from 19.05 hours to 19.40 hours. Therefore, the final report was filed under Section 143 and 341 I.P.C.

3.It is the submission of the learned counsel for the petitioner that petitioner and other accused had only participated in peaceful protest against



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the illegal arrest of the aforesaid persons. They had not indulged in any violation or any illegal activities. They have not prevented the free flow of traffic or the public. No independent witness was examined in support of the case of the prosecution and the witnesses examined in this case are all Police officials. In such circumstances, this petition is filed for quashing the proceedings.

4.In response, the learned Government Advocate (Criminal side) submitted that the witnesses examined in this case even though Police officials, have given statement supporting the case of the prosecution that petitioner and other accused had unlawfully assembled, indulged in road roko, wrongful restrain of public and vehicle movement. Thus, he prayed for dismissal of this petition.

5.Considered the rival submissions and perused the records.

6.This Court in Crl.O.P.No.23022 of 2022 while dealing with quashing of case registered under Section 143 & 341 IPC observed that only 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



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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.-

7. 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 restrained 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 petitioner.

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 Original petition is allowed. Proceedings against the petitioner in S.T.C.No.355 of 2023 on the file of the learned Judicial Magistrate No.II, Mannarkudi, is quashed. Consequently, connected miscellaneous petition is closed.

06.03.2023

Internet:Yes
Index:Yes/No
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To:

- 1.Sub-Inspector of Police,
Kuthanallur Police Station,
Thiruvarur – 614 101.
- 2.The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN, J.

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