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CrI.O.P.No.6865 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE **G.CHANDRASEKHARAN**

CrI.O.P.No.6865 of 2023

Rajkumar

... Petitioner

Vs.

State represented by,
The Inspector of Police,
Sirkazhi Police Station,
Mayladuthurai District.
Crime No.1404 of 2020.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records and quash the proceedings in Crime No.1404 of 2020 pending on the file of the 1st respondent police.

For Petitioner : Mr.P.Muthamizhselvakumar

For Respondent : Mr.S.Santhosh
Government Advocate (CrI. Side)

ORDER

This Criminal Original Petition is filed to call for the records and quash the proceedings in Crime No.1404 of 2020 pending on the file of the 1st



respondent police.

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2. It is the submission of the learned counsel for the petitioner that the petitioner is one of the accused in Crime No.1404 of 2020 registered for the offences under Sections 143, 341, 188 and 269 of I.P.C. It is his further submission that even assuming the petitioner participated in the protest, the protest was a peaceful protest against the illegal mining activities. There was no violence or illegal act committed by any of the participants in the protest.

3. The final report is not filed for the offences under Sections 143, 341 and 269 of I.P.C. Police cannot register FIR for the offences punishable under Section 188 of I.P.C. The offences under Section 143, 341 and 188 of I.P.C. are punishable with imprisonment for a term less than one year. Therefore, even if a final report is filed now, there is a bar under Section 468 of the Cr.P.C. for taking cognizance of the offences and thus, he prays for quashing the FIR.

4. In response, learned Government Advocate submitted that the investigation is not complete and final report is not filed.



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5. The FIR allegations are that on 04.11.2020 at about 20:20 hrs, when the 144 Cr.P.C. prohibition order was in force, the accused in this case had formed an unlawful assembly near Sirkazhi New Bus Stand and hosted the protest against the arrest of one Ezhavalavan. The accused had not dispersed the assembly, despite a warning and therefore, FIR came to be registered for the offences under Sections 143, 341, 188 and 269 of I.P.C.

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 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

(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 resisted 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.

8. Section 188 of IPC defines disobedience to order duly promulgated by public servant to spread infection as under:-

"188. Disobedience to order duly promulgated by Public

Servant:

Whoever, knowing that, by an order promulgated by a



public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

9. In the Judgment reported in **2018 2 LW (Crl) 606 [Jeevanandham and others Vs The Inspector of Police Velayuthampalayam Police Station, Karur District]** dated 20.09.2018, it has been held that the police has no right to file a case under Section 188 of IPC and to investigate the same without getting proper permission from the concerned Jurisdictional Magistrate. Here, there is no material to show that before registering the case, permission of the concerned jurisdictional Magistrate has been obtained. In such



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circumstances, the respondent has no right to register the case and to investigate the matter.

10. Further, with regard to the case registered under Section 269 of IPC, though the case was registered on 04.11.2020, there is no material produced so far, that the petitioner had knowingly attempted to spread infection of any disease dangerous to life. And it is also not the case of the respondent that at the time of the incident, the petitioner was affected by Covid-19, so that gathering of accused in this case resulted in spread of COVID – 19.

11. Therefore, this Court is of the considered view that the petitioner cannot be prosecuted for the offences under Sections 143, 341, 188 and 269 of I.P.C. That apart, the offence under Section 143 is punishable with imprisonment of either description for a term which may extend to six months, or with fine, or with both; the offence under Section 341 is punishable with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both and the offence under Section 188 is punishable with imprisonment of either description for a term which may extend to six months, or with fine which



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may extend to one thousand rupees, or with both.

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12. As per Section 468 of Cr.P.C., the final report ought to have been filed within a period of one year from the date of commission of offence when an offence is punishable with imprisonment which may extend to one year. The FIR was registered in this case on 04.11.2020. Till date, final report is not filed. Therefore, even if the final report is filed now, in view of the bar under Section 468 of Cr.P.C., the Court cannot take cognizance of the offences. In view of the above, continuance of the criminal proceeding in Crime No.1404 of 2020 against the petitioner is nothing but an abuse of process of law.

13. Therefore, the proceedings against the petitioner in Crime No.1404 of 2020 is hereby quashed and this Criminal Original Petition is allowed.

28.03.2023

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Internet: Yes

Index: Yes/No

Speaking/Non speaking order

Neutral Citation Case: Yes / No



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1.State represented by,
The Inspector of Police,
Sirkazhi Police Station,
Mayladuthurai District.

2.The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN, J.

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