



CrI.O.P.No.3980 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED : 23.02.2023

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

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- 1.Kumaresan
- 2.Karthik
- 3.Sakthivel
- 4.Jampu
- 5.Mathankumar
- 6.Mayiladuraiyan
- 7.Jagan
- 8.Kulainthaivelu
- 9.Kaviarasu
- 10.Manikandan
- 11.Saravanan
- 12.Thangapandiyan
- 13.Dhinesh Kumar



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14.Gokul Anand

15.Sanmugam

16.Vikki

17.Jagan

18.Ramkumar

19.Ponnarasu

20.Madhu

21.Sanmugam

...

Petitioners

/vs/

State Rep by,
Inspector of Police,
Erode Police Station,
Erode.

...

Respondent

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C. to call for the records and quash the proceedings of STC.No.210 f 2017 on the file of the Judicial Magistrate No.III, Erode.

For Petitioners

... M/s.J.Priscilla Pandian

For Respondent

... Mr.S.Santhosh
Government Advocate (CrI.Side)



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ORDER

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This Criminal Original Petition has been filed to call for the records and quash the proceedings of STC.No.210 of 2017 on the file of the Judicial Magistrate No.III, Erode.

2. The learned counsel for the petitioner submitted that petitioner is a member of Tamizhaga Makkal Munnetra Kazhagam. Petitioners along with other party-men participated in a peaceful protest in front of the District Collector Office, Erode on 09.01.2023. The reason for organizing the protest was to declare Tamil Nadu as a "Drought Hit State" and to pay compensation to the deceased agriculturists families and for other relief relating to the agricultural operations. He further submitted that, it was only a peaceful protest. However, the respondent police registered a false case against the petitioners under Section 341, 143 and 188 of IPC. The First Information Report was registered by the Mr.P.Eshawaran, Inspector of Police, Erode South. He conducted investigation on the same day and filed final report on the same day. The reading of the statement of the prosecution witnesses, namely Subash and Anandakumar shows that they attested the observation mahazar in connection with the protest



organized by Suriyamoorthi of “Kongu Nadu Makkal Katchi”. Petitioners were no way connected with the Kongu Naadu Makkal Katchi. It shows that, without application of mind and without properly recording the statement of the witnesses, the statements of stock witnesses are filed in this case. He further submitted that Police Officer cannot register an FIR under Section 188 of IPC. There are no ingredients to make out the case against the petitioners under Section 341, 143 of IPC. Thus, he prays of quashment of the proceedings in S.T.C.No.210 of 2017 as against the petitioners.

3. The learned Government Advocate (Crl. Side) opposes the petition on the ground that, without any prior permission, petitioners and other accused formed unlawful assembly and staged a protest in front of the Collector's Office, Erode District and therefore, case was instituted.

4. Considered the rival submissions and perused the records. It is seen from the records produced in this case that petitioners and other accused had staged a protest in front of District Collector Office, Erode on 09.01.2017 to declare the State of Tamil Nadu as "Drought Hit State" and seeking relief to the



deceased agriculturists families and other relief in connection with agricultural operations. The FIR allegation also shows that the petitioner and other accused were arrested only as a preventive measure and it appears that they have not indulged in any criminal acts.

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:

6 .Section 143 of Cr.P.C reads as follows:

“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.-



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7. In the case before hand, there is no specific allegations against the petitioners 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 ingredients for prosecuting the petitioners under Section 143 and 341 IPC are not made out and the continuation of trial would be a harassment to the petitioners.



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

25. In view of the discussions, the following guidelines are issued insofar as an offence under [Section 188](#) of IPC, is concerned:

a) A Police Officer cannot register an FIR for any of the offences falling under [Section 172](#) to [188](#) of IPC.

b) A Police Officer by virtue of the powers conferred under [Section 41](#) of Cr.P.C will have the authority to take action under [Section 41](#) of Cr.P.C., when a cognizable offence under [Section 188](#) IPC is committed in his presence or where such action is required, to prevent such person from committing an offence under [Section 188](#) of IPC.

c) The role of the Police Officer will be confined only to the preventive action as stipulated under [Section 41](#) of Cr.P.C and immediately thereafter, he has to inform about the same to the public servant concerned/authorised, to enable such public servant to give a



complaint in writing before the jurisdictional Magistrate, who shall take cognizance of such complaint on being prima facie satisfied with the requirements of [Section 188](#) of IPC.

d)In order to attract the provisions of [Section 188](#) of IPC, the written complaint of the public servant concerned should reflect the following ingredients namely;

i) that there must be an order promulgated by the public servant;
ii) that such public servant is lawfully empowered to promulgate it;
iii)that the person with knowledge of such order and being directed by such order to abstain from doing certain act or to take certain order with certain property in his possession and under his management, has disobeyed; and

iv)that such disobedience causes or tends to cause;

(a) obstruction,annoyance or risk of it to any person lawfully employed;
or

(b) danger to human life, health or safety; or

(c) a riot or affray.

e)The promulgation issued under [Section 30\(2\)](#) of the Police Act, 1861, must satisfy the test of reasonableness and can only be in the nature of a regulatory power and not a blanket power to trifle any democratic dissent of the citizens by the Police.

f)The promulgation through which, the order is made known must be by something done openly and in public and private information will not be a promulgation. The order must be notified or published by beat of



drum or in a Gazette or published in a newspaper with a wide circulation.

g)No Judicial Magistrate should take cognizance of a Final Report when it reflects an offence under [Section 172 to 188](#) of IPC. An FIR or a Final Report will not become void ab initio insofar as offences other than [Section 172 to 188](#) of IPC and a Final Report can be taken cognizance by the Magistrate insofar as offences not covered under [Section 195\(1\)\(a\)\(i\)](#) of Cr.P.C.

h)The Director General of Police, Chennai and Inspector General of the various Zones are directed to immediately formulate a process by specifically empowering public servants dealing with for an offence under [Section 188](#) of IPC to ensure that there is no delay in filing a written complaint by the public servants concerned under [Section 195\(1\)\(a\)\(i\)](#) of Cr.P.C.

9. It is seen from the FIR that, this case was registered by Mr.P.Eshawaran, Inspector of Police, Erode South. He also filed final report, which is impermissible for the reason that investigation would not be proper and unbiased. Therefore, continuance of the trial proceedings as against the petitioners in S.T.C.No.210 of 2017, for the aforesaid reasons, is an abuse of process of law and harassment to the petitioners.



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10. In this view of the matter, this Criminal Original Petition is allowed and the proceedings against the petitioners in S.T.C.No.210 of 2017 on the file of the learned Judicial Magistrate No.III, Erode is hereby quashed.

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Index: Yes/No
Speaking/Non speaking order
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1. The Fast Track Court,
Egmore, Allikulam, Chennai.
2. The Public Prosecutor,
High Court, Madras.



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