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Crl.O.P.No.9792 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2023

CORAM:

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

Crl.O.P.No.9792 of 2023
and
Crl.M.P.Nos.6412 and 6413 of 2023

Sheik Pareeth

... Petitioner

Vs.

The Sub Inspector of Police,
Dharapuram Police Station,
Dharapuram, Tiruppur District - 641 604
(Crime No.83 of 2020)

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records relating to S.T.C.No.260 of 2020, pending on the file of the Judicial Magistrate- I, Dharapuram and quash the same as against the petitioner by allowing the criminal original petition.

For Petitioner : Mr.Rukmani Venugopalan

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



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ORDER

This Criminal Original Petition is filed to call for the entire records pertaining to the case in S.T.C.No.260 of 2020, pending on the file of the Judicial Magistrate- I, Dharapuram and quash the same.

2. The learned counsel for the petitioner submitted that the petitioner is charged for the offences under Sections 143 and 341 of IPC. The case of the prosecution is that the petitioner engaged in an unlawful assembly without prior permission whereby the petitioner and certain others had assembled and protested against the arrest of the protestors who had raised their voice against the Citizenship (Amendment) Act, 2019, thereby causing disturbance to the general public. The petitioner was not even informed about the registration of the F.I.R. and the Charge sheet until 29.03.2023 when he received intimation from the Regional Passport Office, Coimbatore upon his application for Passport. The petitioner was not even in the place of occurrence on the date of the incident that allegedly took place on 14.02.2020 at Dharapuram. Therefore, the present petition is filed.



3.The learned Government Advocate (Crl.Side) opposed this petition and submitted that the witnesses had given statement that the petitioner 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.

4. Considered the rival submissions and perused the records.

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

(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 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.



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7. In this view of the matter, this Criminal Original Petition is allowed and the proceedings against the petitioner in S.T.C.No.260 of 2020, pending on the file of the Judicial Magistrate- I, Dharapuram is quashed. Consequently, connected miscellaneous petitions are also closed.

28.04.2023

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Internet:Yes

Index:Yes/No

Speaking/Non speaking order

Neutral Citation Case: Yes / No



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- To:
1. The Judicial Magistrate- I, Dharapuram.
 2. The Public Prosecutor,
Madras High Court.
 3. The Sub Inspector of Police,
Dharapuram Police Station,
Dharapuram, Tiruppur District - 641 604.



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G.CHANDRASEKHARAN, J.

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