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CRL.O.P.No. 10527 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.05.2023

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No.10527 of 2023
and Crl.M.P.Nos.6750 & 6751 of 2023

Siva Sankar

... Petitioner

Vs.

1.State represented by
The Inspector of Police,
Ariyalur Police Station,
Ariyalur District.
(Crime No.1353 of 2020)

...1st respondent/Complainant

2.Umasanger
Village Administrative Officer,
No.10, Valanjanagram,
Ariyalur District.

...2nd respondent/defacto complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C.,
pleased to call for the records in STC.No.1486 of 2021 on the file of the
learned Judicial Magistrate No.1, Ariyalur and quash the same.

For Petitioner : Mr.P.S.Prabu

For Respondents

For R1 : Mr.S.Santhosh
Government Advocate (Crl.side)



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ORDER

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This Criminal Original Petition has been filed to quash the final report in STC.No.1486 of 2021 on the file of the learned Judicial Magistrate No.1, Ariyalur for the offences punishable under Sections 143, 341, 269 & 271 of IPC, as against the petitioner.

2. The case of the prosecution is that on 24.12.2020, the petitioner along with other accused have conducted the rally in the name of “Vidiyalai Nokki Stalin Kural” from Anna Statue through SKN Junction, Senthurai, Road, College Road, Theradi, Chatram, Madha Temple and vani Mahal in Ariyalur District by without adhering to the safety protocols issued by the then State Government. On the basis of the above said allegation, the respondent police registered the complaint against the petitioner herein and others for the offences under Sections 143, 341, 269 & 271 of IPC, in Crime No.1353 of 2020.

3. The learned Counsel appearing for the petitioner would submit that the petitioner is an innocent person and he has not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.1353 of 2020 for the offences under Sections 143, 341, 269 & 271 of IPC, as against the petitioner. Hence, he prayed to



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quash the same.

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4.The learned Government Advocate (crl.side) would submit that the petitioner along with other accused have conducted the rally in the name of “Vidiyalai Nokki Stalin Kural” from Anna Statue through SKN Junction, Senthurai, Road, College Road, Theradi, Chatram, Madha Temple and vani Mahal in Ariyalur District by without adhering to the safety protocols issued by the then State Government. Therefore, he vehemently opposed the quash petition and prayed for dismissal of the same.

5. Heard the learned counsel appearing for the petitioner and the learned Government Advocate (Crl. Side) appearing for the first respondent.

6. It is to be noted that while exercising the power under Section 482, the Court should be slow, at the same time, if the Court finds that from the entire materials collected by the prosecution taken as a whole, would not constitute any offence, in such situation, directing the parties to undergo ordeal of trial will be a futile exercise and it will infringe the right of the persons and in this regard, the Apex Court in *State of Haryana and others Vs. Bhajan Lal and Others* reported in *1992 Supp (1) Supreme Court Cases 335*, has been



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held as follows :

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“.....

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or -complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;



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(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

7. 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



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(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.-

8. Only when the assembly fit into any of the above circumstances, it could be construed as unlawful. The accused had not shown any criminal force to commit any mischief, crime or any offence or by way of criminal force or tried to take possession of the property or right to use of incorporeal right which is in possession of enjoyment of others or rights.

9. Similarly, the petitioner along with other accused have been charged for an offence under Section 269 of the Indian Penal Code on the ground that the accused unlawfully assembled when the spread of COVID 19 was at its peak, unmindful of the fact that they may catch COVID and may be a carrier for COVID 19. To attract an offence under Section 269 IPC, only when the



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accused are likely to spread the infection of any disease dangerous to life, they

shall be prosecuted under this section. It is not the case of the prosecution that the accused is already infected with COVID 19 or their assembly in the public place would likely to spread the disease and hence, the offence under Section 269 of IPC also shall not be attracted against the accused.

10. In such a view of the matter, continuing the prosecution is a futile exercise and if the entire allegation in the Final Report is taken together, it would not constitute any offence and hence, this Court is of the considered view to quash the case in STC.No.1486 of 2021 on the file of the learned Judicial Magistrate No.1, Ariyalur.

11. Accordingly, this Criminal Original Petition stands allowed and the final report in STC.No.1486 of 2021 on the file of the learned Judicial Magistrate No.I, Ariyalur for the offences under Sections 143, 341, 269 & 271 of IPC as against the petitioner alone is quashed. Consequently, connected miscellaneous petitions are closed.

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Internet : Yes / No

Index : Yes / No

Speaking / Non Speaking order

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G.K.ILANTHIRAIYAN, J.

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To

1. The learned Judicial Magistrate No.1,
Ariyalur.
2. The Inspector of Police,
Ariyaluar Police Station,
Ariyalur District.
3. The Public Prosecutor,
Madras High Court,
Chennai.

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