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Crl.O.P.No.13070 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.06.2023

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.13070 of 2023
and Crl.M.P.No.7941 of 2023

1.Mukesh Kannan

2.Manikandan

3.Venkadesan

...Petitioners

Vs.

1.The State represented by
Inspector of Police,
Edaiyur Police Station,
Tiruvarur District.
Crime No.144 of 2017

2.Naga Rajendran

...Respondents

Prayer : Criminal Original Petition has been filed under Section 482 of Cr.P.C, to call for the records pertaining to S.T.C.No.230 of 2018 on the file of learned Judicial Magistrate, Thiruthuraipoondi and to quash the same.

For Petitioners : Mr.K.C.Karl Marx

For Respondents :Mr.Leonard Arul Joseph Selvam



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Government Advocate (crl.side)
(For R1)

ORDER

This Criminal Original Petition has been filed to call for the records pertaining to S.T.C.No.230 of 2018 on the file of learned Judicial Magistrate, Thiruthuraipoondi and to quash the same.

2.The learned counsel for the petitioners submitted that petitioners are charged for the offences under Section 143 and 341 I.P.C. To constitute offence under Section 143 I.P.C. there must be atleast five persons forming unlawful assembly. However, in this case, only three persons are prosecuted for the offence under Section 143 I.P.C. which is impermissible and illegal. That apart, none of the witnesses spoke about the wrongful restraint and therefore offence under Section 341 is also not made out. He further submitted that one student was brutally beaten by a teacher. Against that peaceful protest was staged by parents of the students. Nothing untoward was happened in the protest and the protest was peaceful.



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3. In response, the learned Government Advocate (Criminal side) submitted that petitioners had protested without prior permission and caused disturbance to the general public and for the general transport.

4. Considered the rival submissions and perused the records.

5. It is seen from the allegations made in the final report that on 24.07.2017, at about 3 p.m. the accused had staged the protest against the school management of Edaiyur Government Higher Secondary School and thus caused disturbance to the public and to the free flow of traffic. Thus, final report was filed against the petitioners under Sections 143 and 341 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 I.P.C 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 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 petitioners or any of the member of the unlawful assembly that he 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



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petitioners under Section 143 and 341 IPC are not made out and the continuation of trial would be a harassment to the petitioners.

8.In this view of the matter, this Criminal Original Petition is allowed and case in S.T.C.No.230 of 2018 on the file of learned Judicial Magistrate, Thiruthuraipoondi, against the petitioners is quashed. Consequently, connected miscellaneous petition is closed.

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Index: Yes/No
Speaking/Non speaking order
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G.CHANDRASEKHARAN, J.

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To

1. Inspector of Police,
Edaiyur Police Station,
Tiruvarur District.

2. The Public Prosecutor,
High Court, Madras.

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and Crl.M.P.No.7941 of 2023

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