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Crl.O.P.No.13263 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.06.2023

CORAM:

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

Crl.O.P.No.13263 of 2023
and Crl.M.P.No.8014 of 2023

1.Vadivel

2.Manikkam

3.Sakthivel

4.Murugan

5.Selvaraj

6.Kothandam

7.Pandurangan

... Petitioners

Vs.

State rep. by
Inspector of Police,
Thellar Police Station,
Tiruvannamalai District.
Crime No.72 of 2022

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records pertaining to S.T.C.No.572 of 2022 pending on the file of the learned Judicial Magistrate, Vandavasi and to quash the same.



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For Petitioner : Mr.K.C.Karl Marx

For Respondent : Mr.Leonard Arul Joseph Selvam
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to call for the records pertaining to S.T.C.No.572 of 2022 pending on the file of the learned Judicial Magistrate, Vandavasi and to quash the same.

2.It is the submission of the learned counsel for the petitioners that petitioners are charged for the offences under Section 143, 283 and 290 I.P.C. in S.T.C.No.572 of 2022 pending on the file of the learned Judicial Magistrate, Vandavasi. It is his further submission that petitioners had only participated in a democratic and peaceful protest against cutting of trees at Nallur Village Eri and that the village should be declared as separate revenue village. The protest was peaceful and no untoward incident had happened during the protest. After the Police asked them to disburse, they disbursed from the protest site. However, they are unnecessarily being prosecuted for the aforesaid offences. Therefore, this petition.

3.He further submitted that this Court in Crl.O.P.No.17903 of 2021 and



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Crl.O.P.No.11291 of 2022 quashed the cases registered under Section 143 and 341 of IPC and 143, 188 and 341 of IPC respectively, on the ground that, the petitioners therein were engaged in protest, which is their fundamental right. No public lodged complaint and no public got affected, due to the protest conducted by the petitioners. Petitioners had only raised slogans against the Government and the same would not amount to commission of offence and it is a fundamental right under the constitution of India.

4.In response, the learned Government Advocate (Criminal side) submitted that petitioners unlawfully assembled and staged protest without seeking permission from the competent authorities and therefore they are now being prosecuted.

5.Considered the rival submissions and perused the records.

6.The First Information Report allegations show that petitioners and other accused staged their protest near koot road at Vandhavasi to Dindivanam road demanding that Kondayankuppam Village to be declared as separate revenue village and that they have share in Nallur village eri and Nallur general public should not be permitted to cut trees in the eri. Since,



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petitioners and other accused had not obtained prior permission for staging the protest First Information Report in Crime No.72 of 2022 came to be registered for the offences under Section 143, 283 and 290 I.P.C. Subsequently after investigation final report was filed for the offences under Section 143, 283 and 290 I.P.C.

7.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.-

8. Section 143 of IPC reads as follows:

“143. Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six month, or with fine, or with both.”

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



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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. Therefore, this Court is of the considered view that the ingredients for prosecuting the petitioners under Section 143 is not made out and the continuation of trial would be a harassment to the petitioners.

9. Section 283 I.P.C. reads as follows:-

283. Danger or Obstruction in public way or line of navigation:-

Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished with fine which may extend to two hundred rupees.

10. As per this Section, if anyone does any Act or omitted to take order



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with any property in his possession which may cause danger, obstruction or injury to any person in any public way or public line of navigation is liable for punishment to a fine which may extend to two hundred rupees.

11.It is seen from the final report that witnesses cited are all Police officials. Only independent witnesses cited are the witnesses to observation mahazar. No independent witness was examined with regard to the alleged nuisance committed by the accused by staging protest. Unless the general public who suffer due to the protest staged by the accused is examined, it cannot be concluded definitely that petitioners/accused committed the offence under Section 283 I.P.C.

12.Section 290 I.P.C. reads as follows:-

290.Punishment for public nuisance in cases not otherwise provided for. – Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

13.Section 290 I.P.C. is a general Section prescribing punishment for public nuisance which is not otherwise provided for. As said earlier, there is no witness examined to show that there was a public nuisance committed by



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the petitioners. In this view of the matter, this Court is of the view that there are no ingredients made out for prosecuting the petitioners for offences under Section 283 and 290 I.P.C.

14.In conclusion, for the reasons stated above, this Court finds that petitioners cannot be prosecuted for the offences under Sections 143, 283 and 290 of I.P.C.

15.In this view of the matter, this Criminal Original Petition is allowed and case in S.T.C.No.572 of 2022 pending on the file of the learned Judicial Magistrate, Vandavasi, against the petitioners is quashed. Consequently, connected miscellaneous petition is closed.

15.06.2023

Internet: Yes
Index: Yes/No
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To:

1. Inspector of Police,
Thellar Police Station,
Tiruvannamalai District.

2. The Public Prosecutor
Madras High Court.



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G.CHANDRASEKHARAN, J.
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