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Criminal Original Petition No.16925 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2023

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Criminal Original Petition No.16925 of 2023

and

Crl.M.P.Nos.10877 & 10878 of 2023

1.Raja Rajendran
S/o.Rajendran

2.R.Kumar
S/o.Ramasamy

... Petitioners

Vs

1.The State represented by,
Inspector of Police,
F1-Chintadaripet Police Station,
Chennai - 600 002.
Crime No.557 of 2019

2.T.M.Raja
The Sub Inspector of Police,
F-1, Chintadaripet Police Station,
Chennai - 600 002.

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, 1973, praying to call for the records relating to the C.C.No.4022 of 2020 on the file of the learned XIV Metropolitan Magistrate, Egmore and to quash the same insofar as against the petitioner



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herein.

For Petitioner : Mr.M.Dinesh
For Respondents : Mr.A.Damodaran
Additional Public Prosecutor for R1

ORDER

This petition has been filed challenging the proceedings initiated by the second respondent against the petitioners under Sections 143 I.P.C. read with 41(6) of Tamil Nadu City Police Act.

2.Heard the learned counsel appearing on behalf of the petitioner and the learned Additional Public Prosecutor appearing on behalf of the first respondent and perused the materials available on record.

3.The co-accused had already filed a quash petition before this Court in CrI.O.P.No.19725 of 2022 and this Court allowed the petition by order dated 25.08.2022. For better appreciation, the relevant portion of the order is extracted hereunder:-

"2. The allegation in the FIR indicates that on 05.11.2019, the petitioners were agitating in respect of seeking regularization of their jobs before TNEB Department and it alleged that the petitioners created some traffic hindrance knowing of the curfew imposed under Section



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41(6) of Tamil Nadu City Police Act. Thereby, the petitioners have committed offences under Section 143 IPC read with 41 Tamil Nadu City Police Act.

3. The learned counsel for the petitioner submitted that the prosecution has been launched with false allegations and even when the entire prosecution case taken as a face value, the same would not constitute any offence and continuing the prosecution is nothing but abuse of process of law. Therefore, submitted that the same may be quashed.

4. The Learned Government Advocate (Criminal Side) submitted that the the petitioners unlawfully assembled and caused disturbance to the public, thereby, they have been prosecuted.

5. It is to be noted that while exercising the power under Section 482 of Cr.P.C, 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 held as follows :

-.....

(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



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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;

(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.?



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6. *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. *Only when the assembly fit into any of the above circumstances, it could be construed as unlawful. The*



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materials collected by the prosecution do not show that the accused had 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.

8. Similarly, it is not the case of the prosecution that the accused has assembled to commit any offence. When the prosecution prima facie failed to establish that the assembly of five or more persons with a common object to commit any offence or any of the circumstances shown under Section 143, mere assembly of more than five persons cannot be construed that there is an unlawful assembly. Therefore, when the people gathered to show the protest in a democratic way, such a protest, in the absence of any ingredients of offence under Section 143 cannot be construed as unlawful assembly.

9. Further, Section 41 of the Tamil Nadu City Police Act deals with the power to regulate assemblies, meetings and procession in public place. In this case, there is no material to show that the petitioner and other accused failed to obey the order of the respondent Police during protest.

10. Considering the above, this Court is of the view that mere launching of FIR by the prosecution itself is not sufficient to reach to the conclusion that offences are made out and the materials collected by the prosecution do not support for proving the case and continuing the prosecution on shaky or without any materials is clear abuse of process of law.”

The above order will also enure in favour of the petitioners and the continuation of the proceedings against the petitioners will amount to abuse of process of **Court**. In view of the same, the proceedings in C.C.No.4022 of



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2020 on the file of the learned XIV Metropolitan Magistrate, Egmore is hereby quashed and this Criminal Original Petition stands allowed.

Consequently, connected miscellaneous petition is closed.

31.07.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
gba

To

The XIV Metropolitan Magistrate,
Egmore, Chennai.

N.ANAND VENKATESH, J



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