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CRL.O.P.Nos.29848, 30011, 30016 & 30064 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2023

CORAM:

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

CRL.O.P.Nos.29848, 30011, 30016 & 30064 of 2022 and
and CrI.MP.Nos.18305, 18387, 18392 & 18428 of 2022

CrI.OP.No.29848 of 2022

Aslam Basha

... Petitioner

Vs.

1.The State rep. by
The Sub Inspector of Police,
Vaniyambadi Town Police Station,
Vellore District

2.Srinivasan

... Respondents

PRAYER:

Criminal Original Petition filed under Section 482 of Cr.P.C. praying to
call for the records from the first respondent police in crime No.1912 of 2020
and to quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.R.Thirumoorthy

For Respondents

For R1 : Mr.A.Gopinath,
Government Advocate(crl.side)



CRL.O.P.Nos.29848, 30011, 30016 & 30064 of 2022

Crl.OP.No.30011 of 2022

Aslam Basha

... Petitioner

Vs.

1.The State rep. by
The Sub Inspector of Police,
Vaniyambadi Town Police Station,
Vellore District

2.Srinivasan

... Respondents

PRAYER:

Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records from the first respondent police in crime No.1712 of 2020 and to quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.R.Thirumoorthy

For Respondents

For R1 : Mr.A.Gopinath,
Government Advocate(crl.side)

Crl.OP.No.30016 of 2022

Aslam Basha

... Petitioner

Vs.

1.The State rep. by
The Sub Inspector of Police,
Vaniyambadi Town Police Station,
Vellore District

2.Srinivasan

... Respondents

PRAYER:



CRL.O.P.Nos.29848, 30011, 30016 & 30064 of 2022

Criminal Original Petition filed under Section 482 of Cr.P.C. praying to

call for the records from the first respondent police in crime No.1547 of 2020

and to quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.R.Thirumoorthy

For Respondents

For R1 : Mr.A.Gopinath,
Government Advocate(crl.side)

Crl.OP.No.30064 of 2022

Aslam Basha

... Petitioner

Vs.

1.The State rep. by
The Sub Inspector of Police,
Vaniyambadi Town Police Station,
Vellore District

2.Srinivasan

... Respondents

PRAYER:

Criminal Original Petition filed under Section 482 of Cr.P.C. praying to

call for the records from the first respondent police in crime No.1773 of 2020

and to quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.R.Thirumoorthy

For Respondents

For R1 : Mr.A.Gopinath,
Government Advocate(crl.side)



CRL.O.P.Nos.29848, 30011, 30016 & 30064 of 2022

COMMON ORDER

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The criminal original petition in Crl.OP.No.29848 of 2022 has been filed to quash the F.I.R. in crime No.1912 of 2020 registered by the first respondent police for offences under Sections 143, 341, 269, 270 of IPC r/w 2, 3 of Epidemic Diseases Act, 1897, 51(b) of Disaster Management Act, 2005, as against the petitioner and others; the criminal original petition in Crl.OP.No.30011 of 2022 has been filed to quash the F.I.R. in crime No.1712 of 2020 registered by the first respondent police for offences under Sections 341, 269, 270 & 271 of IPC r/w 2, 3 of Epidemic Diseases Act, 1897, 51(b) of Disaster Management Act, 2005, as against the petitioner and others; the criminal original petition in Crl.OP.No.30016 of 2022 has been filed to quash the F.I.R. in crime No.1547 of 2020 registered by the first respondent police for offences under Sections 143, 341, 269, 270 of IPC r/w 2, 3 of Epidemic Diseases Act, 1897, 51(b) of Disaster Management Act, 2005, as against the petitioner and others; and the criminal original petition in Crl.OP.No.30064 of 2022 has been filed to quash the F.I.R. in crime No.1773 of 2020 registered by the first respondent police for offences under Sections 143, 341, 269, 270 of IPC r/w 2, 3 of Epidemic Diseases Act, 1897, 51(b) of Disaster Management Act, 2005, as against the petitioner and others.



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2. The prosecution case in Crl.OP.No.29848 of 2022 is that on 11.07.2020 at about 11.00 A.M, the defacto complainant namely Srinivasan who is the Sub-Inspector of Police and other police officials attached with 1st respondent Police Station were on patrol surveillance at Vaniyambadi Town, near Bustand, they found that the petitioner and his 14 party cadres belonging to Tamilnadu Congress Committee were unlawfully assembled without any prior permission for staged protest and road roco while at prohibitory order was in force. The petitioner who is State President of Minority Committee (Tamilnadu Congres Committee) led the said protest against the "Kumudham" weekly Magazine which printed his leader's caricature in said magazine and they burnt the magazine and all had raised slogans against the Government for the issue during the covid-19 pandemic period. Therefore, the defacto complainant/2nd respondent warned them but despite police warning, the petitioner has raised slogans and caused traffic nuisance.

2.1 The prosecution case in Crl.OP.No.30011 of 2022 is that on 18.06.2020 at about 02.30 P.M, the defacto complainant namely Srinivasan who is the Sub-Inspector of Police and other police officials attached with 1st respondent Police Station were on patrol surveillance at Vaniyambadi town near Hotel Saravana Bhavan, they found that the petitioner and his 5 party



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cadres belonging to Tamilnadu Congress Committee were unlawfully assembled without any prior permission for conducting rally while at prohibitory order was in force. The petitioner who is State President of Minority Committee (Tamilnadu Congress Committee) led the said rally and all had raised slogans against the Government for the killing of 20 Indian Jawans and our Indian land was occupied by China during the covid-19 pandemic period. Therefore, the defacto complainant/2nd respondent warned them but despite police warning, the petitioner has raised slogans and caused traffic nuisance.

2.2 The prosecution case in Crl.OP.No.30016 of 2022 is that on 26.05.2020 at about 10.00 A.M, the defacto complainant namely Srinivasan who is the Sub-Inspector of Police/2nd respondent and other police officials attached with 1st respondent Police Station were on patrol surveillance at Vaniyambadi town CL Road near SBI Bank, they found that the petitioner and his 5 party cadres belonging to Tamilnadu Congress Committee were unlawfully assembled without any prior permission and staged road roco while prohibitory order was in force. The petitioner who is State President of Minority Committee (Tamilnadu Congress Committee) led the said protest and all had raised slogans against the Government to revoke the Electricity



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Amendment Bill during the covid-19 pandemic period. Therefore, the defacto complainant/2nd respondent warned them, but despite police warning, the petitioner has raised slogans and caused traffic nuisance.

2.3 The prosecution case in Crl.OP.No.30064 of 2022 is that on 26.06.2020 at about 02.30 P.M, the defacto complainant namely Srinivasan who is the Sub-Inspector of Police and other police officials attached with 1st respondent Police Station were on patrol surveillance at Vaniyambadi CL road, near Rajiv Gandhi statue, they found that the petitioner and his 23 party cadres belonging to Tamilnadu Congress Committee were unlawfully assembled without any prior permission for silent tribute while at prohibitory order was in force. The petitioner who is State President of Minority Committee (Tamilnadu Congress Committee) led the said silent tribute and all had raised slogans against the Government for the killing of Indian Jawans at Ladak Border during the covid-19 pandemic period. Therefore, the defacto complainant/2nd respondent warned them, but despite police warning, the petitioner has raised slogans and caused traffic nuisance.

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 the above mentioned cases as against the petitioner and others.

Hence he prayed to quash the same.

4. The learned Government Advocate (crl.side) appearing for the first respondent would submit that the investigations are almost completed and the respondent police have only to file final report.

5. Heard Mr.R.Thirumoorthy, learned counsel appearing for the petitioner and Mr.A.Gopinath, 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 the case of ***State of Haryana and others Vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) Supreme Court Cases 335***, 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 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.”

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

(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. As such, the present FIR's are liable to be quashed.

9. Insofar as the offence under sections 2 & 3 of Epidemic Diseases Act, 1897, this Court will not find fault with the respondent for having registered the impugned First Information Reports. But no adverse consequence ensued. It is seen that the Government has taken a policy decision not to pursue the cases registered in the wake of breach of lock down



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restrictions. In these circumstances, continuance of the impugned prosecution is not warranted.

10. Accordingly, all the Criminal Original Petitions stand allowed and the impugned proceedings in crime Nos.1912, 1712, 1547 & 1773 of 2020 registered by the first respondent police are hereby quashed as against the petitioner alone. Consequently, connected miscellaneous petitions are closed.

30.11.2023

Internet : Yes / No

Index : Yes / No

Speaking / Non Speaking order

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To

- 1.The Sub Inspector of Police,
Vaniyambadi Town Police Station,
Vellore District
- 2.The Government Advocate
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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