



Crl.O.P.No.2181 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.02.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.2181 of 2023

and

Crl.M.P.Nos.1224 & 1225 of 2023

- 1.Ganesan
- 2.Sarathy
- 3.Ravindran
- 4.Ganesan
5. Karthikeyan
6. Selvakumar
7. Rajasekar
- 8.Saravanan
9. Marimuthu
- 10.Sivakumar
- 11.Divakar
- 12.Nataraj
13. Selvaraj
- 14.Senthil



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15.Venkatesan

16.Munish

17.Anandhappa Raja

18.Bhuvaneswaran

19.Jayaprakash

20.Aravind

21.Yuvaraj

22.Ibrahim Sha

23.Thunaivendhan

24.Nilavan

25. Selvi

26. Amirtha

27.Sathya

28. Vanisri

29. Chithra

30. Ajitha

31.Nelavathi

32. Ilavarasi

33. Kavitha

...

Petitioners



Crl.O.P.No.2181 of 2023

Vs.

The State Represented by,
The Inspector of Police
K-11, CMBT Police Station,
Koyambedu, Chennai.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for records in C.C.No.5671 of 2018 on the file of the learned Chief Metropolitan Magistrate, Egmore and quash the same.

For Petitioner : Mr.S.Arunkumar

For Respondents : Mr.S.Santhosh
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition is filed to call for records in C.C.No.5671 of 2018 on the file of the learned Chief Metropolitan Magistrate, Egmore and quash the same.

2. The learned counsel for the petitioners submitted that petitioners/students staged a protest against the increase in bus fare on 25.01.2018 in a democratic and peaceful manner. In this regard, a complaint was made and FIR was registered in Crime No.104 of 2018 for the offence under Sections 143, 188 of IPC against the petitioners. After investigation, the



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same was taken on file in C.C.No.5671 of 2018. Therefore, present petition is filed for quashing the C.C.No.5671 of 2018.

3. The learned Government Advocate (Crl. Side) submitted that the witnesses had given statement that the petitioner and the other accused had unlawfully assembled and raised slogans against the Government preventing the free flow of the vehicles and movement of the public and therefore, trial has to be proceeded.

4. Considered the rival submissions and perused the records. It is seen from the final report filed in this case that on 25.01.2018, opposite to the Coimbedu Bus Stand, 24 women and 11 men without obtaining any prior permission from the Government, formed unlawful assembly and staged the protest against the increase in bus fare. In order to avoid any further illegal activities, respondent police arrested the persons and the case came to be registered. From the allegations made in the FIR, it is apparent that, petitioner was arrested only on preventive measures to prevent any illegal act committed by the petitioner.



5. Section 143 of Cr.P.C reads as follows:

“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



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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.-

6. As indicated above, petitioner had only assembled for stage protest in a democratic and peaceful manner against increase in bus fare. Immediately, they were arrested as a preventive measure. In the case before hand, there is no specific allegations against the petitioner 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 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, it is no doubt that the alleged assembly cannot be considered as unlawful assembly and the members of assembly cannot be prosecuted for the offence under Section 143 IPC. So far as offence under Section 188 of IPC is concerned, there is a prohibition under Section



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195 of Cr.P.C for the defacto complainant to register the FIR. The offence under Section 188 of IPC can be taken cognizance only on the basis of the complaint in writing by the public servant concerned. In this regard, no other public servant except the defacto complainant had given the complaint. Therefore, complaint registered for the offence under Section 188 of IPC is against the procedure contemplated under Section 195 of Cr.P.C. Therefore, this Court is of the considered view that the ingredients for prosecuting the petitioners under Section 143 and 188 of IPC are not made out and the continuation of trial would be a harassment to the petitioners.

7. In this view of the matter, this Criminal Original Petition is allowed and the proceedings against the petitioners in C.C.No.5671 of 2018 on the file of the learned Chief Metropolitan Magistrate, Egmore is hereby quashed. Consequently, connected miscellaneous petitions are also closed.

03.02.2023

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Internet:Yes
Index:Yes/No
Speaking/Non speaking order



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G.CHANDRASEKHARAN, J.

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To:

- 1.The Chief Metropolitan Magistrate, Egmore
- 2.The Inspector of Police
K-11, CMBT Police Station,
Koyambedu, Chennai.
- 3.The Public Prosecutor,
High Court of Madras.

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and

CrI.M.P.No.1224 & 1225 of 2023

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