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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 16/03/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGOVAN**

Cr1.OP(MD)No.4955 of 2023

and

Cr1.MP(MD)Nos.4383 and 4384 of 2023

1.M.Sulthan Basha
2.A.Mubarak Ali
3.Mohamed Rafiq
4.S.Hussain
5.Riyas Ahamed

: Petitioners/
A1, A3, A7, A10 & A42

Vs.

1.State represented by
The Inspector of Police,
B5, South Gate (L & O) Police Station,
Madurai City,
(In Crime No.583 of 2015) : R1/Complainant

2.B.Ganesan.
Inspector of Police,
B5, South Gate (L & O) Police Station,
Madurai City. : R2/De-facto Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records of the charge sheet in STC No.735 of 2016 on the file of the Judicial Magistrate No.IV, Madurai and quash the same as illegal and pass such further or other orders.



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For Petitioners : Mr.S.M.A.Jinnah
For Respondents : Mr.B.Nambiselvan
Additional Public Prosecutor

O R D E R

This criminal original petition has been filed seeking quashment of the case in STC No.735 of 2016 on the file of the Judicial Magistrate No.IV, Madurai.

2.The case of the prosecution in brief:-

On 29/09/2015 at about 03.30 pm, the petitioners and others, who are the members of the organization called 'ISLAMIYA JANANAAYAGA MUNNANI', assembled unlawfully and staged protest/demonstration on the eve of Imam Ali's memorial day and they also made slogans against the Government and the Court decision of 20 Tamil people shot dead in Andhra Pradesh, 5 Muslim teenagers shot dead in Hyderabad, Yahub Menon and Afsal Guru were hanged up dead by Court and Imamn Ali's encounter, without any proper permission from the concerned authorities. Upon which, a case in Crime No.583 of 2015 was registered for the offences under sections 143, 188 and 341 IPC. After completing the formalities of



investigation, charge sheet was filed and it was taken cognizance in STC No.735 of 2016 by the Judicial Magistrate No.IV, Madurai.

3. Seeking quashment of the same, this petition has been filed by the petitioners on the ground that none of the allegations mentioned either in the FIR or charge sheet attract any of the ingredients of the offences alleged against them.

4. Heard both sides.

5. For attracting the offence under section 143 IPC, the ingredients of section 141 IPC must be fulfilled.

6. Section 141 IPC reads as under:-

"Section 141. 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-

First-To overawe by criminal force, or show of criminal force, or any



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public servant in the exercise of the lawful power of such public servant; or

Second-To resist the execution of any law, or of any legal process; or

Third.-To commit any mischief or criminal trespass, or other offence; or

Fourth.-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

Fifth.-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.

Explanation.-An assembly which was not unlawful when it assembled, may subsequently become an unlawful assembly."



7. When we apply the ingredients to the factual position of the case, it is seen that none of the ingredients mentioned in 141 IPC get attracted. They have simply made protest against the Government and the Court decision. It is a democratic right of every person to raise voice against the political or Government demanding legal action as a point. Such a right has been exercised by the petitioners. So, that cannot be construed as 'unlawful or illegal'.

8. Section 341 IPC reads as under:-

"341. Punishment for wrongful restrain.-Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees or with both."

9. Similarly, section 341 is not attracted. There is no allegation to the effect that they prevented the public from proceeding in a particular way.



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10. Section 188 IPC reads as under:-

"188. Disobedience to order duly promulgated by public servant.-Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such directions, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.



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Explanation.-It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

11. Section 195 Crl.P.C is a bar for the police to register the FIR and investigate the matter in respect of section 188 of IPC and file a report under section 173 of Cr.P.C. Section 195 of Cr.P.C stipulates that no court shall take cognizance of any of the offences under sections 172 to 188 (both inclusive) of the IPC, except on the complaint in writing with the public servant concerned or some of the public servant to whom administrative support.

12. No doubt that they are causing some sort of inconvenience to the public. For that, they ought to have proceeded under Madras City Police Act. But instead of doing so, they have been charged for the offences under sections 143, 341 and 188 IPC, which is not permissible under law. On that sole ground, the entire prosecution is bad in law.



13.In the result, this criminal original petition is **allowed**. The case in STC No.735 of 2016 on the file of the Judicial Magistrate No.IV, Madurai is hereby quashed as against the petitioners. Consequently, connected Miscellaneous Petitions are closed.

16/03/2023

Index:Yes/No
Internet:Yes/No

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To,

- 1.The Judicial Magistrate No.IV,
Madurai.
- 2.The Inspector of Police,
B5, South Gate (L & O) Police Station,
Madurai City.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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