



Crl.O.P.(MD)No.6108 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **25.09.2023**

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.6108 of 2023

Mohamed Ali

... Petitioner

Vs.

1.The Inspector of Police,
Eruvadi Police Station,
Tirunelveli.
(Crime No.132 of 2022)

2.Sukumar
Sub-Inspector of Police,
Eruvadi PS, Tirunelveli District.

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records of impugned FIR in Crime No.132 of 2022 on the file of the first respondent and quash the same.

For Petitioner : Mr.S.M.A.Jinnah

For Respondents : Mr.SS.Madhavan
Government Advocate (Crl. Side)



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ORDER

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This Criminal Original Petition is filed seeking quashment of FIR in Crime No.132 of 2022 dated 22.09.2022 registered for the offences punishable under Sections 143 and 283 of IPC.

2. It is submitted by learned counsel for the petitioner that according to the prosecution case on 22.09.2022 basing on a secret information, the defacto complainant/SI of police along with his police party reached the scene of occurrence where the petitioner/accused and other accused were holding a protest near Eruvadi Bus Stand turning point and causing obstructions to the traffic in respect of condemning the raid by NIA at the houses of National Executive Committee and State Headquarters. The said protest allegedly continued until 7:15 pm and even after the warning to the protestors refused to disburse suo motu case was registered in Crime No.132 of 2022 for the offences under Sections 143 and 283 of IPC.

3. Learned counsel for the petitioner submitted that the allegations



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against the petitioner and other persons are false and they have not committed any offence. There is no material before the Court to show that the offences have been committed by the petitioner. There was no violation to any of the orders passed by any competent authority and that the petitioner and others were staging a peaceful demonstration without causing inconvenience or disturbance or obstructions to anybody.

4. Learned Government Advocate on the other hand submits that apart from the petitioner there are other persons who participated in dharna against NIA for taking action against one of their members by following due process of law.

5. Before going into the merits in respect of grounds on which the petitioner sought for quashment of FIR, it is noted that the FIR has been registered for the offences punishable under Sections 143 and 283 of IPC. Section 143 of IPC runs as under:-

"Whoever is a member of an unlawful assembly,
shall be punished with imprisonment of either description



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for a term which may extend to six months, or with fine, or with both."

6. Section 283 of IPC runs as under:-

"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."

The punishment for offence under Section 143 of IPC is imprisonment for a term which may extend to six months or fine or with both whereas, the punishment for offence under Section 283 of IPC can be awarded with a fine which may extend to two hundred rupees.

7. Section 468 of Cr.P.C. runs as under:-

"468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section



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(2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment."

8. Considering the law of limitation in respect of filing charge sheet in respect of both cases, the charge sheet has to be filed within one year from the date of offence. Admittedly, offence was committed on 22.09.2022. As on today one year had already been lapsed but charge sheet has not been filed thereby the FIR can be quashed under Section 468 of Cr.P.C.

9. In respect of the allegations levelled against the petitioner that the petitioner/A2 and other accused have allegedly committed offences



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under Sections 143 and 283 of IPC, the respondent police have to prove that the petitioner being a member of unlawful assembly is liable for punishment under Section 148 of IPC. The respondent police is required to prove that the petitioner and five persons or more than five persons assembled with the intention to commit any of the acts as mentioned in Section 141 of IPC. Being a member of an assembly of more than five persons, is no offence, unless such assembly is to commit any of the offences mentioned under 141 (1) to 141 (5) of I.P.C. Even if the contentions raised by the respondent police in *suo motu* FIR are accepted to be true, it is not the case of the prosecution that the petitioner and others have assembled to do any of the acts mentioned under Clause (1) to (5) of Section 141 of IPC. Thereby, there are no ingredients to hold that the petitioner and others have committed offences under Sections 143 IPC.

10. In order to attract Section 283 of IPC, the petitioner and other accused should have caused danger or obstruction to any person in a public way. The respondent police have not received any complaint from



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any of the persons to the effect that the petitioner and other accused have obstructed his way from proceeding further or there is no allegation with the petitioner and other accused for causing injuries to anybody, therefore when nobody has complained to the respondent police that they were obstructed by the petitioner and other accused, no case can be registered under Section 283 of IPC.

11. In *State of Haryana Vs. Bhajanlal, reported in 1992 SCC (Cri) 426*, it has been held that

“(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](#)



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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



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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. [305D-H; 306A-E] 8.2. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence justifi- on and this case does not call for the exercise of extraor- dinary or inherent powers of the High Court to quash the F.I.R. itself. [307B] [State of West Bengal v. S.N. Basak](#), [1963] 2 SCR 52;

12. A bare perusal of the above, it is made clear that in case if continuation of proceeding is hit by any statute, those proceedings even if in the stage of FIR can be quashed. In the case on hand, continuation of proceedings in Crime No.132 of 2022 is hit by Section 468 of the Code of Criminal Procedure as even if the Police are going to finish the investigation. Magistrate Court cannot take cognisance of the offence alleged against the accused and thereby, First Information Report



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registered against the petitioner can be quashed.

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13. Considering the above, this petition is allowed and the FIR in Crime No.132 of 2022 pending on the file of the first respondent police is quashed.

25.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

PKN/mvs.

To

- 1.The Inspector of Police,
Eruvadi Police Station,
Tirunelveli.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

DR.D.NAGARJUN,J

PKN/mvs.



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