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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 05/04/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Cr1.OP (MD) No.11111 of 2022

and

Cr1.MP (MD) Nos.7007 and 7009 of 2022

Thahirkhan

: Petitioner/A15

Vs.

1.The State,

Rep. by Inspector of Police,
Cumbum North Police Station,
Theni District.

(Crime No.413 of 2019)

: R1/Complainant

2.Vinothraja,

Sub Inspector of Police,
Cumbum North Police Station,
Theni District.

: R2/De-facto complainant

Prayer: Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records relating to the proceedings in STC No.554 of 2020 on the file of the Judicial Magistrate, Uthamapalayam, Theni District and quash the same as against the petitioners.

For Petitioner

: Mr.S.Saravanakumar

For Respondents

: MrS.Manikandan
Government Advocate
(Criminal side)

**O R D E R**

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This criminal original petition has been filed seeking quashment of the case in STC No.554 of 2020 on the file of the Judicial Magistrate, Uthamapalayam, Theni District.

2.The case of the prosecution in brief:-

On 24/11/2019 at about 05.50 pm, the accused, who belongs to a political party staged demonstration and protest against the judgment of the Hon'ble Supreme Court in Babri Majd issue. They caused hindrance to the traffic and created nuisance. Upon the occurrence, a case in Crime No.413 of 2019 was registered for the offences under sections 143, 341 and 283 IPC. After completing the formalities of investigation, charge sheet was filed before the Judicial Magistrate, Uthamapalayam and it was taken cognizance in STC No.554 of 2020.

3. Seeking quashment of the same, this petition has been filed mainly on the ground of bar of limitation, because of the alleged occurrence took place on 24/11/2019; so far, no proper identification of the



accused has been taken during the course of investigation.

4. Reading of the final report and statement shows that about 130 persons gathered in the place of occurrence and staged a protest/demonstration against the Supreme Court Judgement. No doubt, they have alleged to have caused hindrance to the public movement and traffic.

5. But the question, which arises for consideration is whether proper identification of the persons, who gathered in the place of occurrence, during the course of investigation. All the persons, who examined by the Investigating Officer, are mostly police personnel. Even the independent witness, there was no identity, the persons, who are participated in the above said protest. When about 130 persons alleged to have been gathered in the place of occurrence, only 20 persons have been shown as accused and the remaining persons deleted from the final report. About 130 persons were arrested in the spot itself and 110 persons have been released or deleted from the final report stating that they did not participate in the protest. How the above said 20 persons have been identified is not properly stated in the final report.



6. More over, for attracting the offence under section 143 IPC, the ingredients of section 141 IPC must be fulfilled.

7. 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 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



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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."

8. Reading of the final report does not indicate the availability or existence of any of the ingredients. The protest has been undertaken only against the judgment of the Hon'ble Supreme Court, because the petitioner and other participants did not agree with the judgment. Their intention was only to express their view and not to make any law and order issue.

9. Similarly, for attracting the offence under section 341 IPC, there must be material to show that some was restrained unlawfully. There is no complaint by any of the public.



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10. Similarly, for attracting the offence under section 283 IPC also, materials must be available to show that they prevented the public from using the public way. But here there is no such allegation. So it is seen that they have expressed their dissatisfaction with the judgment of the Hon'ble Supreme Court. Their aim was only to express their view and not to make any law and order issue. So the continuation of the criminal prosecution will amount to abuse of process of the court and law. On that score, this petition is liable to be allowed.

11. In the result, this criminal original petition is **allowed**. The entire proceedings in STC No.554 of 2020 on the file of the Judicial Magistrate, Uthamapalayam, Theni District, is hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

05/04/2023

Index:Yes/No
Internet:Yes/No
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To,



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- 1.The Judicial Magistrate,
Uthamapalayam,
Theni District.
- 2.The Inspector of Police,
Cumbum North Police Station,
Theni District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

G. ILANGO VAN, J



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