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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 09/06/2023

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The Hon'ble Mr. Justice **G. ILANGO VAN**

Cr1.OP(MD)No.10113 of 2023
and
Cr1.MP(MD)No.8040 of 2023

Ragavan : Petitioner/Accused Rank
Not known

Vs.

1.The Inspector of Police,
Kenikkarai Police Station,
Ramanathapuram District.
(Crime No.541 of 2022) : R1/Complainant

2.Karmegam : 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 FIR in Crime No.541 of 2022 on the file of the 1st respondent police and quash the same as illegal so far as the petitioner is concerned.

For Petitioner : M/s.V.Bharkavi

For 1st Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor

**O R D E R**

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This criminal original petition has been filed seeking quashment of the FIR in Crime No.541 of 2022 on the file of the 1st respondent.

2.The facts in brief:-

On 06/08/2022 at about 12.30 pm, the accused persons gathered near Ramanathapuram New Bus stand illegally and staged protest demanding removal of TASMACH shop near Municipality Girls School, NH-Ortho Care Hospital. They were numbering about 32. The above said demonstration/protest was held without proper permission. Upon which, a case in Crime No.541 of 2022 for the offences under sections 143 and 282 IPC.

3. Seeking quashment of the same, this petition has been filed mainly on the ground that no proper identification of the accused has been taken during the course of investigation and there is no specific allegation made against the petitioner.



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3

4. Heard both sides.

5. Reading of the FIR and statement shows that about 32 persons gathered in the place of occurrence and staged a protest/demonstration for removal of the TASMAC shop.

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



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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."

8. Reading of the FIR does not indicate the availability or existence of any of the ingredients. The protest has been undertaken only for removal of the TASMACH shop situated near the school. Their intention was only to express their view and not to make any law and order issue.



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9. 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 view for removal of the TASMAL shop near the public school. Their aim was only to express their view and not to make any law and order issue. At no stretch of imagination, It will amount to illegal demand or illegality. They have staged protest without causing disturbance any one and it is a peaceful protest. 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.

10. In the result, this criminal original petition is allowed. The FIR in Crime No.541 of 2022 on the file of the 1st respondent is hereby quashed as against the petitioner. Consequently, connected Miscellaneous Petition is closed.

09/06/2023

Index:Yes/No
Internet:Yes/No

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To,

- 1.The Inspector of Police,
Kenikkarai Police Station,
Ramanathapuram District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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7

G.ILANGOVA, J

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