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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 26/06/2023

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

Cr1.OP(MD)No.11445 of 2023
and
Cr1.MP(MD)No.9022 of 2023

Mr.Arun Prasad : Petitioner/Accused

Vs.

1.The State rep. by
The Inspector of Police,
Fort Police Station,
Trichy City.
(Crime No.371 of 2022) : R1/Complainant

2.Mr.K.Subramanian,
Sub Inspector of Police,
Fort P.S Trichy,
Trichy. : R2/De-facto Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records pertaining to the charge sheet in STC No.9134 of 2022 on the file of the Judicial Magistrate No.1, Trichy, and quash the same as illegal, improper, unlawful, unconstitutional and arbitrary and pass such further or other orders.



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For Petitioner : Mr.M.Karthikeyavenkita
Chalapathy

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.9134 of 2022 on the file of the Judicial Magistrate No.1, Trichy.

2.The case of the prosecution in brief:-

On 08/03/2022 at about 05.15 pm, in the evening, when the de-facto complainant police party was under routine patrolling duty near Anna Statue, Chinthamani, the accused, who belongs to a particular Association gathered unlawfully and made protest or demonstration, demanding action against the persons, who indulged in the offence against the women and children. They also demanded proper action against the persons, who are responsible for the murder of one Yogalakshmi. Based upon the occurrence, a case in Crime No.371 of 2022 was registered for the offences under sections 143, 341 IPC and section 41(6)(a) of the Tamil Nadu City Police Act. After completing the investigating process, final report



was filed and it was taken cognizance in STC No.9134 of 2022 by the Judicial Magistrate No.1, Trichy.

3. Seeking quashment of the same, this petition has been filed on the ground that none of the allegations mentioned either in FIR or final report attract any of the ingredients as alleged.

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



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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 demanding action for the death of one student and seeking protection of the women from the violence activities. 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.



10.As regards the offence under section 41(6) (a) of Tamil Nadu City Police Act, there is no nothing stated in the impugned final report as to when the order was passed by the City Police, Commissioner, the violation of which would attract an offence under City Police Act. In the absence of the order passed by the public servant the offence under section 41(6)a) of the Tamil Nadu City Police Act would not be made out. Further, there is no penal provision in the Criminal Amendment Act, 2005. The respondent has mechanically included section 41(6) (a) of the Act.

11.Making demand or protest against in-action of the Government against the persons, who indulged in offence against women and children, cannot be construed as illegal and unlawful. Even though, no prior permission was obtained from the concerned authority, considering the genuineness of the demand, the concerned authorities ought to have asked the protestors to disburse or at least took them in their custody. Without resorting to such action, they registered the case and filed the final report, which not required. On that sole ground, the entire prosecution is liable to be quashed.



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12.In the result, this criminal original petition is **allowed**. The case in STC No.9134 of 2022 on the file of the Judicial Magistrate No.1, Trichy is hereby quashed as against the petitioner. Consequently, connected Miscellaneous Petition is closed.

26/06/2023

Index:Yes/No
Internet:Yes/No

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To,

- 1.The Judicial Magistrate No.1,
Trichy.
- 2.The Inspector of Police,
Fort Police Station,
Trichy.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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