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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 27/06/2023

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

CrI.OP (MD) No.11569 of 2023

Abishek : Petitioner/A66
Vs.

1.State rep. by
Inspector of Police,
Kollemcode Police Station,
Kanyakumari District. : R1/Complainant

2.Sivakumar.B,
Inspector of Police,
Kollemcode Police Station,
Kanyakumari 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 pertaining to the case in STC No.1985 of 2022 on the file of the Judicial Magistrate-II, Kuzhithurai, quash the same as far as the petitioner is concerned and to pass such further or other orders.

For Petitioner : Mr.S.Vasanth Yugesh

For Respondents : Mr.B.Nembiselvan
Additional Public Prosecutor

**ORDER**

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This criminal original petition is filed seeking quashment of the case in STC No.1985 of 2022 on the file of the Judicial Magistrate No.I, Kuzhithurai.

2.The case of the prosecution in brief:-

On 08/08/2021, when the police team were on routine patrol duty, the members of a political party under the head of one Dharmaraj, assembled near Kannanagam Junction, conducted demonstration/protest condemning the functioning of the Government. On the basis of the above said occurrence, a case in Crime No.356 of 2021 was registered for the offences under sections 143, 269, 270, 283 and 290 IPC r/w section 3 of Epidemic Diseases Act, 1897. After completing the investigation, final report was filed for the offences under sections 143, 269, 270, 283 and 290 IPC and it was taken cognizance in STC No.1985 of 2022 by the Judicial Magistrate No.II, Kuzhithurai.

3.Seeking quashment of the same, this petition has been filed by this petitioner, who is arrayed as A63.



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4. Heard both sides.

5. An allegation of pandemic violation protocol imposed by the Government and making protest against the functioning of the Government, without proper and prior permission.

6. Conducting demonstration or protest against the functioning of the Government, cannot be construed as illegal in nature. It is a democratic right of every political party to make objection against the functioning or policy of the Government. So, that cannot be stated to be illegal.

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

8. 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-



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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 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



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subsequently become an unlawful assembly."

9. When we apply the ingredients to the factual position of the case, it is seen that none of the ingredients mentioned in 141 IPC are not attracting. They have simply made protest against the performance of the Government. It is a democratic right of every person to raise voice against the political or Government condemning their policies. Such a right has been exercised by the petitioner along with others. So, that cannot be construed as 'unlawful or illegal'.

10. As per section 269 IPC, the maximum punishment period is six months or fine or both. But section 270 IPC upto two years or with fine or with both. Section 283 IPC is punishable with fine, which may extend to two hundred rupees, so also section 290 IPC. There is no question of limitation here. But it is also seen that the Government has taken policy decision to withdraw the cases registered against the public for pandemic violation.



11.The learned Additional Public Prosecutor has fairly admitted that such a Government Policy decision has been taken by the Government and subsequently, G.O. Has been passed.

12.In view of the above said submission made by the Additional Public Prosecutor, this criminal original petition stands **allowed**. The case in STC No.1985 of 2022 on the file of the Judicial Magistrate No.II, Kuzhithurai, is hereby quashed as against the petitioner.

27/06/2023

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

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- 1.The Judicial Magistrate No.II,
Kuzhithurai,
Kanyakumari district
- 2.The Inspector of Police,
Kollemcode Police Station,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G. ILANGO VAN, J

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Crl.OP(MD)No.11569 of 2023

G. ILANGO VAN J:

The matter is listed today under the caption “for being mentioned”, at the instance of the learned counsel appearing for the petitioner.

2. It is submitted by the learned petitioner's counsel that in the order, dated 27.06.2023, due to inadvertence, it was wrongly mentioned as 'Judicial Magistrate No.I, Kuzhithurai', instead of “***Judicial Magistrate No.II, Kuzhithurai***” and in paragraph No.3, it was wrongly mentioned the petitioner rank as 'A63', instead of “***A66***”.

3. In view of the same, the Registry is directed to make necessary corrections wherever it appears in the order and issue a fresh copy of the order to the parties concerned.



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14.07.2023

PNM