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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 27/06/2023

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

Cr1.OP(MD)No.11533 of 2023

and

Cr1.MP(MD)No.9107 of 2023

1.Balasubramanian	
2.Sonaimuthu	
3.Ramesh	
4.Kaviyarasan	
5.Chanthiraiya	
6.Muthuselvam	
7.Kannan	: Petitioners 1 to 7/A3 to A8
8.Durai Karthik	: 8 th petitioner/A11
9.Suresh	: 9 th petitioner/A13
10.Rajangam	: 10 th petitioner/A14
11.Ravikumar	
12.Chandrasekar	
13.Ravichandran @ Ravi	
14.Kumar	
15.Suresh	
16.Lakshmanan	
17.Selvam	: Petitioners 11 to 17/A16 to A22

Vs.

1.The State represented by The Inspector of Police, Palamedu Police Station, Madurai District. (In Crime No.95 of 2017)	: R1/Complainant
2.Mr.Devaraj, Sub Inspector of Police, Palamedu Police Station, Madurai District.	: R2/De-facto Complainant



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PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the entire records pertaining to the First Information Report in Crime No.95 of 2017 on the file of the 1st respondent police station and quash as against the petitioners and other accused persons are concerned and pass such further or other orders.

For Petitioners : Mr.R.Karunanidhi

For Respondents : Mr.B.Nambiselvan
Additional Public Prosecutor

O R D E R

This criminal original petition has been filed seeking quashment of the FIR in Crime No.95 of 2017 on the file of the 1st respondent.

2.The case of the prosecution in brief:-

On 25/04/2014 at about 10.45 am, the members of a political party assembled near Palamedu Bus Stop and stayed protest/demonstration, demanding waiving of the agricultural loan and establishment of the Cauvery Management Board. In spite of request made by the police, they did not disburse. Upon which, a case in Crime No.95 of 2017 was registered for the offences under sections 143, 188 and 341 IPC.



3. Seeking quashment of the same, this petition has been filed by the petitioners on the ground that none of the allegations mentioned in the FIR attract any of the ingredients of the offences alleged against them.

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

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."

7. When we apply the ingredients to the factual position of the case, it is seen that none of the ingredients mentioned in section 141 IPC get attracted. They have simply made protest against the Central Government to set up the Cauvery Management Board. It is



a democratic right of every person to raise voice against the political or Government demanding legal action at 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. Section 188 IPC reads as under:-

"188. Disobedience to order duly promulgated by public servant.-Whoever, knowing that, by an order promulgated



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by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such directions, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extent to one month, or with fine which may extend to two handed rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extent to one thousand rupees, or with both.



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Explanation.-It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm."

11. Section 195 Cr.P.C is a bar for the police to register the FIR and investigate the matter in respect of section 188 of IPC and file a report under section 173 of Cr.P.C. Section 195 of Cr.P.C stipulates that no court shall take cognizance of any of the offences under sections 172 to 188 (both inclusive) of the IPC, except on the complaint in writing with the public servant concerned or some of the public servant to whom administrative support.

12. No doubt that they are causing some sort of inconvenience to the public. For that, they ought to have been proceeded under Madras City Police Act. But instead of doing so, they have been charged for the offences



under sections 143, 341 ad 188 IPC, which is not permissible under law. On that sole ground, the entire prosecution is bad in law.

13.In the result, this criminal original petition is **allowed**. The FIR in Crime No.95 of 2017 on the file of the 1st respondent is hereby quashed as against the petitioners. Consequently, connected Miscellaneous Petition is closed.

27/06/2023

Index:Yes/No
Internet:Yes/No

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To,

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



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G.ILANGOVAN, J

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