



CrI.O.P.(MD)No.14008 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	08.08.2023
Delivered on	10.08.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

CrI.O.P.(MD)No.14008 of 2023

and

CrI.M.P.(MD) No.10973 of 2023

Aravind Saran

... Petitioner

Vs.

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

2. Karmegam,
The Sub Inspector of Police,
Kennikkarai Police Station,
Ramanathapuram District.

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the FIR in Crime no.541 of 2022 on the file of the 1st respondent Police and Quash the same as illegal.



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For Petitioner : Mr.V.Bharkavi

For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor

ORDER

This petition is filed seeking for quashment of FIR in Crime No. 541 of 2022 pending on the file of the first respondent police registered against the petitioner under Sections 143 and 283 of IPC.

2. According to the police that on 06.08.2022 at about 12.30 noon, when the police party was on patrolling duty near Ramanathapuram New Bus Stand, the Secretary along with 31 workers of Naam Tamizhar Party assembled unlawfully and started protesting for removal of TASMACH shop situated near Municipality Girls School. Since the said protest has refused to disburse from the public place, they were arrested and a case has been registered in Crime No.541 of 2022 for the offences under Sections 143 and 283 of IPC against all the thirty one persons.

3. It is submitted by learned counsel for the petitioner that the allegations levelled against the petitioner are baseless and even if the



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contents of FIR are accepted to be correct, no case is made out against the petitioner and therefore, sought for quashing the same. It is submitted further that there is no complaint made by any of the persons in respect of alleged protest and even according to FIR, the agitators were demonstrating peacefully without causing inconvenience to any of the citizens and staging dharna in a democratic way which is permitted in our Constitution and the respondent police by abusing the process has filed a false case.

4. Learned Additional Public Prosecutor while opposing the statement made by learned counsel for the petitioner sought for dismissal of this petition.

5. The FIR has been registered against the petitioner for the offences under Sections 143 and 283 of IPC. Section 143 of IPC deals with the penal provision of sentencing a person for a period of six months whoever becomes a member of unlawful assembly. Unlawful assembly has been defined under Section 141 of IPC which would go to show that if more than five persons designate assemble to commit the



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offences, as mentioned therein, then the said group can be permitted as unlawful assembly and then, the members of each of other groups can be termed as unlawful assembly. According to the prosecution, the petitioner and other members assembled at the new bus stand, Ramanathapuram and staging dharna. Even according to FIR, the petitioner and his party cadres were assembled there to demonstrate in respect of removal of TASMAL shop from the vicinity of Girls School. The police should have appreciated the petitioner for taking such a cause of removal of liquor shop being run by the Government from the vicinity of the Girls School which is threat to the security of the girl students studying in the said School. As per the FIR there is no mention as to what offence the petitioner and his party cadres assembled have committed for terming the assembly as unlawful assembly. On going through the FIR, there is no material to hold that the petitioner and his members are unlawfully assembled and punishable Section 143 of IPC.

6. The petitioner has also charged for the offence under Section 283 of IPC. Section 283 of IPC runs as under:-



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"Danger or obstruction in public way or line of navigation."

Whoever, by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction or injury to any person in any public way or public line of navigation, shall be punished, with fine which may extend to two hundred rupees."

7. On going through the above provision, it is clear that the police have inappropriately mentioned this section which does not suit the facts of the case. In order to charge a person for the offence under Section 283 of IPC, the accused must be in possession or incharge of the property and being incharge of the property, he must obstruct any person in any public way or public land of navigation, then he can be punished with a fine which may extended up to Rs.200/-. The case of the prosecution is that they were demonstrating peacefully near new bus stand, Ramanathapuram, in protest in respect of removal of liquor shop. There is no complaint from any person that the petitioner and others have obstructed others in the public way, thereby, Section 283 of IPC is not



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applicable.

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8. Leaving that apart, the maximum punishment for the offence under Section 143 of IPC is six months whereas, for the offence under Section 283 of IPC is fine up to Rs.200/-.

9. In *State of Haryana Vs. Bhajanlal, reported in 1992 SCC (Cri) 426*, it has been held that

“(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under [Section 156\(1\)](#) of the Code except under an order of a Magistrate within the purview of [Section](#)



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155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under [Section 155\(2\)](#) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions [of the Code](#) or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in [the Code](#) or the concerned Act, providing



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efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. [305D-H; 306A-E] 8.2. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence justifi- on and this case does not call for the exercise of extraor- dinary or inherent powers of the High Court to quash the F.I.R. itself. [307B] [State of West Bengal v. S.N. Basak](#), [1963] 2 SCR 52;

10. As per Section 486 of Cr.P.C., the police shall file the charge sheet within one year as the punishment for both the offences shall not exceed one year. In the case on hand, the FIR was registered on 06.08.2022 and charge sheet is not filed as on today, that means, even after a lapse of one year, the Police failed to file the charge sheet.

Therefore, on this count also the petitioner is entitled for the relief as



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sought for.

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11. Accordingly, this petition is allowed and the FIR in Crime No. 541 of 2022 pending on the file of the first respondent police is quashed.

10.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No

PKN/mvs.



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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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DR.D.NAGARJUN,J

PKN/mvs.

Pre-delivery order made in
Crl.O.P.(MD)No.14008 of 2023

Dated: 10.08.2023