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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 12/10/2023

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The Hon'ble Mr.Justice **G.ILANGOVAN**

Crl.OP(MD)No.15899 of 2023

and

Crl.MP(MD)No.12634 of 2023

- 1.Mujibur Rahman @ Mujibeer Rahman
- 2.Seeman Sikkanthar @ Sikkandar Batcha
- 3.Nijam Hohaideen @ Nijam Mohaideen
- 4.Abdul Sikkkanthar @ Abdul Sikkandar
- 5.Shahul Hameedu @ Sahulhameed
- 6.Aripkhan @ Arifkhan
- 7.Thajudeen @ Tazudeen
- 8.Jafar Sulthan
- 9.Mohamed Yusuf
- 10.Sheik Ibrahim (Babuji) @ Sheik Ibrahim
- 11.Batsha @ Makdhoon Batcha : Petitioners/A1 to A8,
A13 to A15

Vs.

The State rep. by
Sub Inspector of Police,
South Gate Police Station,
Madurai, Tamil Nadu-625 001. : Respondent/Complainant

PRAYER:- Criminal Original Petition has been filed under section 482 of the Criminal Procedure Code, to call for the records in Crime No.472 of 2022 on the file of the respondent police and to quash the same as against the petitioners and pass any other order or orders.



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For Petitioners : Mr.A.Raja Mohamed
For Respondent : Mr.M.Sakthi Kumar
Government Advocate
(Criminal side)

O R D E R

This criminal original petition has been filed seeking quashment of the FIR in Crime No.472 of 2022 on the file of the respondent police.

2.The case of the prosecution in brief:-

The de-facto complainant lodged a complaint stating that on 06/12/2022 at about 12.30 pm, when he was patrolling with other police personnel near Therku Perumal Mastry Veethi junction, at about 03.10 pm the petitioners along with others without permission from the concerned authority, assembled unlawfully and made protest for the demolition of Babri Masjid, even after warning them to disperse. On the basis of the above said occurrence, a case in Crime No.472 of 2022 was registered for the offences under sections 143, 341 and 290 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.



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4. Heard both sides.

5. Conducting demonstration or protest made against the demolished day of 450 years old Babri Masjid cannot be construed as 'unlawful demand'. It is a democratic right of every person to make objection or agitation as the case be. So, that cannot be stated to be illegal.

6. 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



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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."

8. 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 attracting. They have simply made protest against the demolition of 450 years of Babri Masjid. Such a right has been exercised by the petitioners along with others. So, that cannot be construed as 'unlawful or illegal'.

9. 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."

10. Similarly, section 341 is not attracted. There is no allegation to the effect that they prevented the public from proceeding in a particular way.

11. As far as offence under Section 290 of IPC is concerned as per averments of the complaint the petitioners raised slogan. Now it is relevant to extract the provisions under Section 290 of IPC.



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"290.Punishment for public

nuisance in cases not otherwise provided

for—Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees

12.On careful perusal of the above section, no averments in the FIR to attract the said provision. Further the offence under Section 290 of IPC is punishable with fine which may extend to two hundred rupees. The First Information Report discloses that the petitioners only raised slogan and those words do not constitute any offence.

13.For all the reasons stated above, this court is of considered view that the entire prosecution is bad in law and accordingly, this petition is liable to be allowed.

14.In the result, this criminal original petition is **allowed**. The FIR in Crime No.472 of 2022 on the file of the respondent is hereby quashed as against the



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petitioners. Consequently, connected Miscellaneous
Petition is closed.

12/10/2023

Index:Yes/No
Internet:Yes/No

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To,

- 1.The Sub Inspector of Police,
South Gate Police Station,
Madurai.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN, J

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