



WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.07.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CRL.OP No. 28530 of 2022

& CrI.MP. No. 17506 of 2022

1 T.R.RAMESH

...petitioner

Vs.

1 STATE REP BY ITS
ASSISTANT COMMISSIONER OF POLICE MYLAPORE
CHENNAI 600004

2 INSPECTOR OF POLICE
E1 MYLAPORE CHENNAI 600004 (CRIME NO.
378/2022)

3 G.RAVIKUMAR
S/O GURUSAMY RAJA SENIOR ASSISTANT
ARULMIGU KABLIWARAR THIRUKOIL MYLAPORE
CHENNAI 60004

...Respondents

PRAYER : This petition has been filed under Section 482 of Cr.P.C, to



Call for the entire records in FIR in Crime No.378/2022 on the file of the
2nd respondent police and quash the same

For Petitioner : Mr.Sathish Parasaran, Senior Advocate.
for S.A.Shanmugam
For R1 & R2 : Mr.S.Vinoth Kumar
Government Advocate (Crl. side)

ORDER

The petitioners herein filed this petition to to Call for the entire records in FIR in Crime No.378/2022 on the file of the 2nd respondent police and quash the same.

2. The contention of the prosecution is that that the petitioner posted messages in the Social media and induced the activist to unlawfully assemble before Kapaleswarare Temple on 31.08.2022. Based upon his message, more than 50 persons were assembled before the the said Temple and also raised slogans against the HR & CE and Temple authorities thereby the petitioner caused hindrance to the worshipers and general public and also attempted to damage the reputation of the Temple authorities. Based on the complaint of the Temple authorities, FIR in Crime No. 378 of 2022 was registered against the petitioner for the offences punishable under Sections 143, 150 IPC and 41(6)(a) of TN City Police Act



3. The learned counsel for the petitioner submits that the petitioner is president of Temple worshipers Society. Besides, he also engaged in full time social work and also used to write article in daily newspapers regarding illegalities committed by HR & CE in order to wreak Vengeance they lodged a false complaint against the petitioner. In fact, the petitioner was not present on that day as he was busy with his family marriage and he has not induced any worshipers to raise slogan against the temple authorities on that day. Even such assembly is not an unlawful assembly for the reason that there is no material on the side of the prosecution to show that they have committed any mischief, crime or any offence or tried to take possession of the property etc., Further, he submits that mere assemble in front of the temple would not amount to unlawful assembly nor there is any material to show that there was slogan raised by the persons on that day in the temple premises. Even FIR allegation itself shows that there is no illegality committed by the persons those who were assembled before the Temple on that day. Even the FIR allegation itself shows that there is no illegality committed by the accused person on that day. Further, he relied the judgment of this Court in CrI.O.P No. 17853 of 2022 dated 01.08.2022:



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6. It is also relevant to note the definition of Unlawful Assembly: '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 - (i) to overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or (ii) to resist the execution of any law, or of any legal process; or (iii) to commit any mischief or criminal trespass, or other offence; or (iv) 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 (v) 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.'

7. Only when the assembly fit into any of the above circumstances, it could be construed as unlawful. The materials collected by the prosecution do not show that the accused had shown any criminal force to commit any mischief, crime or any offence or by way of criminal force or tried to take possession of the property or right to use of incorporeal right which is in possession or enjoyment of others or rights.

8. In this case also, the petitioners have not unlawfully assembled to commit any offence. Of course, they have democratically raised protest for the inaction on the part of the police for not taking action and such gathering cannot be said to be unlawful assembly. At any event, mere gathering of more than 5 persons will not amount to any offence, unless the action of such persons fit into any of the provision found in Section 141 to constitute such assembly as unlawful assembly. In such view of the matter, this Court is of the view that continuation of prosecution is nothing but an abuse of process of law.



4. By way of reply, the learned counsel for the Government Advocate (Crl. side) Submits that based upon the message given by this petitioner, on 31.08.2022 more than 50 persons were assembled before the Temple and raised slogans against the temple authorities and the petitioner is root cause for the said unlawful assembly. Accordingly, the respondent police rightly filed a FIR against the petitioner. Furthermore, he has causing trouble to the temple authorities by giving false message about the temple authorities. Hence, he prayed to dismiss this petition.

5. Considering the facts of the present case, there is no material available on the side of the prosecution to prove that more than 50 members were unlawfully assembled on 31.08.2022 to commit any offence. Further, as rightly pointed out by the learned counsel for the petitioner that there was no 144 order was issued on that day. Admittedly, on the alleged day there is no preventive order was passed by the authority concerned. Hence, there is no basic material to attract Section 41 (6)(a) of City Police Act. Therefore, this Court is inclined to quash the FIR in Crime No. 378 of 2002, as there is no material to attract Section 41 (6) (a) of the Tamil Nadu City Police Act, 1888.

6. In the result, this petition is allowed. No Costs.



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Consequentially Connected miscellaneous petition is closed.

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To
The Public Prosecutor,
High Court, Madras.



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T.V.THAMILSELVI, J.

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