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Crl.O.P.No.7982 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2025

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.No. 7982 of 2025

M.Sulaiman Sait

.... Petitioner

Vs

State rep by

The Inspector of Police,

T-19, Kelambakkam Police Station, Chennai.

.... Respondent

PRAYER: Criminal Original Petition is filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to quash the FIR No.190 of 2023 registered at Kelambakkam Police Station under Section 145 of Cr.P.C, 1973.

For Petitioner : Mr.Colonel Ganesan for
M/S Colonel Ganesan Associates

For Respondent : Mr.A.Gopinath
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to quash the FIR in



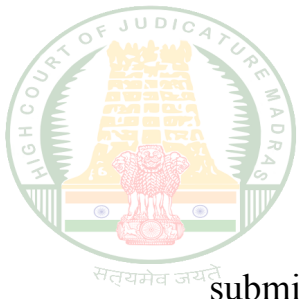
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Crime No. 190 of 2023 for the offence under Section 145 of Cr.P.C.

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2. The case of the prosecution is that on 24.05.2023 at 19.00 hours, while the respondent was on duty as Sub-Inspector of T-19 Kelambakkam Police Station, the petitioner's mother filed a complaint against one Dhanasekar, Harikrishnan, Mahavishnu, Mahesh Balaji, Saravanan and Rajasekar since they vandalized the petitioner's food court and stolen Rs.6,00,000/- in cash. They also assaulted the mother of the petitioner, who is a senior citizen and threatened her with dire consequences. Therefore, the respondent police on 24.06.2023 registered a case in Crime No.178 of 2023 against the accused for the offences punishable under Sections 147, 148, 120(b), 406, 419, 420, 426, 457, 384, 468, 471, 506(i) and 2 of IPC. However, on the very same day, the respondent police suo motu filed a FIR in Crime No.190 of 2023 under Section 145 of Cr.P.C as against the petitioner and arrayed him as one of the person in A party. Hence, this petition.

3. The learned Counsel appearing for the petitioner would



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submit that the petitioner is an innocent person and he has not committed any offence as alleged by the prosecution. Without any base, the first respondent police registered a case in Crime No.190 of 2023 for the offences under Section 145 of Cr.P.C, as against the petitioner. Hence, he prayed to quash the same.

4. The learned Government Advocate (Crl.side) would submit that the investigation is almost completed and the respondent police is about to file a final report.

5. Heard the learned counsel for the petitioner and the learned Government Advocate (Crl.side) for the respondent and perused materials available on record.

6. It is to be noted that while exercising the power under Section 482/ 528, the Court should be slow, at the same time, if the Court finds that from the entire materials collected by the prosecution taken as a whole, would not constitute any offence, in such situation, directing the



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parties to undergo ordeal of trial will be a futile exercise and it will infringe the right of the persons and in this regard, the Apex Court in ***State of Haryana and others Vs. Bhajan Lal and Others*** reported in ***1992 Supp (1) Supreme Court Cases 335***, has been held as follows :

“

(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 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*



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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 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.”

7. It is also relevant to note the definition of Unlawful Assembly:

“Unlawful Assembly:



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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

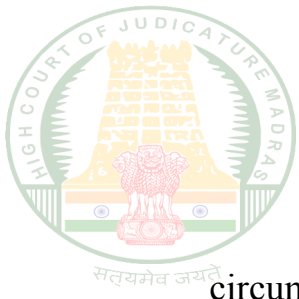
(ii) to resist the execution of any law, or of any legal process; or

(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”.

8. Only when the assembly fit into any of the above



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circumstances, it could be construed as unlawful. The accused had not 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 of enjoyment of others or rights.

9. Accordingly, this Criminal Original Petition stands allowed and the FIR in Crime No.190 of 2023 registered by the respondent police for the offences under Section 145 of Cr.P.C is hereby quashed as against the petitioner alone.

19.03.2025

Index : Yes/No
Neutral citation : Yes/No
Speaking/non-speaking order
shk



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G.K.ILANTHIRAIYAN, J.

shk

To

- 1.The Inspector of Police,
T-19, Kelambakkam Police Station, Chennai.
2. The Public Prosecutor, High Court, Madras.

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