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CRL OP No. 9362 of 2025



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28-03-2025

CORAM

THE HONOURABLE MR JUSTICE G.K. ILANTHIRAIYAN

CRL OP No. 9362 of 2025

and

CrI.M.P.No.6209 of 2025

1. Asar @ Asarutheen
S/o.Mohamed Rafeek, No.1/133,
Thideer Nagar, Kulichar,
Mayiladuthurai District.

Petitioner(s)

Vs

1. The State Rep By Its, The Inspector
Of Police,
Sembanarkoil Police Station,
Mayiladuthurai District.
(Cr.No.17/2020.)

Respondent(s)

PRAYER

To call for the records relating to the case in Cr.No.17/2020 on the file of the respondent herein and quash the same.

For Petitioner(s): Mr. L.Thangappa

For Respondent(s): Mr. A.Gopinath,
Government Advocate (Criminal Side)

**ORDER**

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This Criminal Original Petition has been filed to quash records relating to the case in Crime No.17 of 2020 on the file of the respondent.

2. The case of the prosecution is that on 14.01.2020 at about 16:00 hours based on a routine patrol, the respondent Police noticed the petitioner, along with 459 individuals, had unlawfully assembled in front of a shop, participating in a protest against the Citizenship Amendment Act. Each protester demanded that the central government withdraw the Citizenship Amendment Act. Based on this incident, the respondent police registered a case in Crime No.17 of 2020 for the offence under Sections 143 and 341 of IPC., and Section 2 of Prevention of Insults to National Honour (Amendment) Act, 2003. The assembly occurred without prior permission and resulted in traffic blockage and disturbance to the general public and free movement of traffic.

3. The learned counsel for the petitioner would submit that the petitioner is an innocent person and he has not committed any offence as alleged



by the prosecution. Without any base, the respondent police filed the First

Information Report in Crime No.17 of 2020 for the offences under Sections 143

and 341 of IPC, and Section 2 of the Prevention of Insults to National Honour

(Amendment) Act, 2003, as against the petitioner. Hence, he prayed to quash

the same.

4. The learned Government Advocate (Crl.side) would submit that the petitioners along with others raised agitation against the Government and the officials of the Government and thereby restrained the public and caused traffic and there are specific allegations as against the petitioners. Further, he would submit that Sections 143 and 341 of IPC are a cognizable offences and therefore it is the duty of the police to register a case. Though there is a bar under Section 195(a)(i) of Cr.P.C. to take cognizance for the offence under Sections 143 and 341 of IPC, it does not mean that the police cannot register FIR and investigate the case. Therefore, he vehemently opposed the quash petition and prayed for dismissal of the same.



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/

Section 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 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



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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;

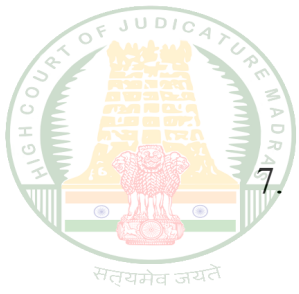
(c) where the uncontroverted allegations made in the FIR or ~complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(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 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.”



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7.

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.”



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8. Only when the assembly fit into any of the above 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 First Information Report in Crime No.17 of 2020 for the offences under Sections 143 and 341 of IPC, and Section 2 of the Prevention of Insults to National Honour (Amendment) Act, 2003, is hereby quashed as against the petitioner alone.

28-03-2025

Index: Yes/No

Speaking/Non-speaking order

Internet: Yes

Neutral Citation: Yes/No

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G.K.ILANTHIRAIYAN J.

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To

1. The State Rep By Its,
The Inspector Of Police,
Sembanarkoil Police Station,
Mayiladuthurai District. (Cr.No.17/2020.)
2. The Public Prosecutor, High Court of Madras.

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