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CRL.O.P.(MD).No.6908 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.04.2025

CORAM:

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

CrI.O.P.(MD).No.6908 of 2025 and
CrI.MP.(MD).Nos.5044 & 5045 of 2025

ThangaTamilSelvan

... Petitioner

Vs.

1.State of Tamil Nadu Rep.By
The Sub Inspector of Police,
Theni Police Station,
Theni District.

2.Kumaresan

... Respondents

PRAYER: Criminal Original Petition filed under Section 528 of BNSS
praying to call for the records in STC.No.147 of 2024 on the file of the learned
Judicial Magistrate, Theni and quash the same.

For Petitioner : Mr.A.S.Aswin Prasanna

For R1 : Mr.A.Gopinath,
Government Advocate (CrI.side)

ORDER

This Criminal Original Petition has been filed to quash the
proceedings in STC.No.147 of 2024 pending on the file of the learned Judicial



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Magistrate, Theni.

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2. The case of the prosecution is that on 24.03.2019 at around 2 p.m., near Theni Nehru Statue, the petitioner burst firecrackers without obtaining any permission from the first respondent.

3. The learned Counsel appearing 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 first respondent police registered the aforesaid case. Hence, he prayed to quash the same.

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

5. It is to be noted that while exercising the power under Section 482, 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 :

“

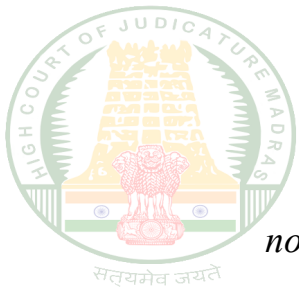
(a) *where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;*

(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 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*



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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;

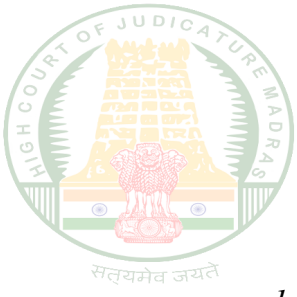
(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.”

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

Section 141 defines 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, 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



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Second - To resist the execution of any law, or of any legal process; or

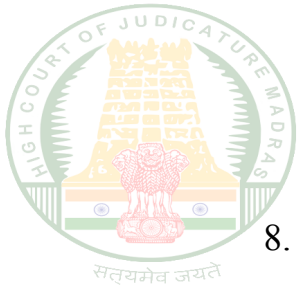
Third - To commit any mischief or criminal trespass, or other offence; or

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.

7. 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.



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8. Accordingly, this Criminal Original Petition stands allowed and

the proceedings in STC.No.147 of 2024 pending on the file of the learned

Judicial Magistrate, Theni is quashed in respect of the petitioner.

Consequently, connected miscellaneous petitions are closed.

25.04.2025

Internet : Yes / No

Index : Yes / No

Speaking / Non Speaking order
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To

- 1.The learned Judicial Magistrate, Theni
- 2.The Sub Inspector of Police,
Theni Police Station,
Theni District.
- 3.The Public Prosecutor,
High Court, Madras.



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G.K.ILANTHIRAIYAN, J.

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