



Crl.O.P.No.23143 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2025

CORAM :

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.O.P.No.23143 of 2025

and

Crl.M.P.No.15813 of 2025

Syed Burkanudeen

... Petitioner

Vs.

1.State of Tamil Nadu represented by
The Inspector of Police,
Vaniyambadi Town Police Station,
Thirupathur District.

2.Sethukarasan
Special Sub-Inspector of Police,
Vaniyambadi Town Police Station,
Thirupathur District.

... Respondents

Prayer : Criminal Original Petition filed under Section 528 of Bharatiya Nagarik Suraksha Sanhita to call for records pertaining to the FIR in Crime No.721 of 2024 on the file of the 1st respondent Police and quash the same as illegal insofar as the petitioner is concerned.

For Petitioner : Mr.T.Leninkumar

For R1 : Mr.R.Vinothraja
Government Advocate (Crl. Side)



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ORDER

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This Criminal Original Petition has been filed to quash the FIR in Crime No.721 of 2024 on the file of the 1st respondent Police, registered against the petitioner (A1) and others for the offences under Sections 189(2), 221, 126(2) and 223 BNS.

2.It is the case of the prosecution that, on 05.12.2024, the petitioner and others approached the 1st respondent Police Station and lodged an oral complaint as against an individual namely Ibrahim as if he had abused the petitioner. The Officer-in-charge of the Police Station asked the petitioner to lodge a written complaint. When the Sub-Inspector of Police arrived and enquired the matter, the petitioner and others refused to cooperate with the enquiry and started a protest by holding the flags of Indian National Congress Party in front of the Police Station and restrained the public from entering the Police Station. Despite warnings given by the Police, the petitioners and the group did not disperse and hence, the Sub-Inspector of Police registered a case as against the petitioner and others for the offences under Sections 189(2), 221, 126(2) and 223 BNS. Challenging the same, the present petition has been filed.



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3.Learned counsel for the petitioners would submit that the entire allegations in the FIR do not make out any offence as against the petitioner. Therefore, continuing the prosecution as against the petitioner is only a futile exercise and therefore, the FIR has to be quashed.

4.Learned Government Advocate (Crl. Side) would submit that the petitioner and others have unlawfully assembled in front of the Police Station and obstructed the officers from discharging their duty as well as restrained the public from entering into the Police Station. Hence, he opposed the petition.

5.I have perused the entire FIR.

6.It is to be noted that, while exercising the power under Section 528 of Bharatiya Nagarik Suraksha Sanhita/Section 482 of Code of Criminal Procedure, this Court should be slow, but at the same time, if the Court finds that the entire materials collected by the prosecution, even when 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 v. Bhajan Lal and others*** reported in ***1992 Supp (1) Supreme Court Cases 335***, has 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;



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(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;

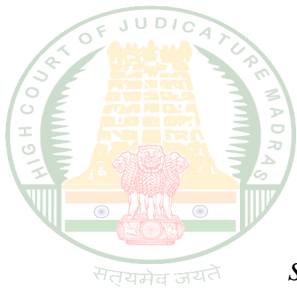
(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious 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” as under Section 189(1) BNS :

“189. Unlawful assembly.—(1) *An assembly of five or more persons is designated an “unlawful assembly”, if the common object of the persons composing that assembly is—*

(a) to overawe by criminal force, or show of criminal force, the Central Government 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



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servant; or

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

(c) to commit any mischief or criminal trespass, or other offence; or

(d) 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

(e) 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.Only when the alleged assembly fits 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, tried to take possession of the property or deprive any person of a right of way, or of the use of water or other incorporeal right of which he is



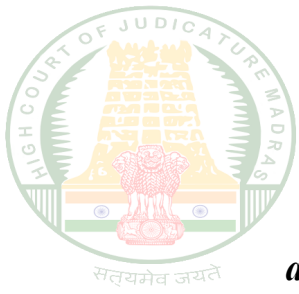
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in possession of enjoyment. Similarly, it is not the case of the prosecution that the accused had assembled to commit any offence. When the prosecution *prima facie* failed to establish that the assembly of five or more persons was with a common object to commit any offence or falls under any of the circumstances shown under the definition of unlawful assembly under Section 189(1) BNS, mere assembly of more than five persons cannot be construed as an unlawful assembly under Section 189(1) BNS nor can be prosecuted under Section 189(2) BNS.

9. Similarly, to attract the offence under Section 223 BNS, there must be disobedience to order duly promulgated by the public servant. In this case, there is no material or evidence available to show that the accused have assembled to resist the execution of any law and there is no whisper whatsoever available in the First Information Report to show that there was promulgation or there were any prohibitory orders existing at the relevant point of time. This Court in ***Moogambigai S. Thirugnanasammantham and others v. State rep. by the Inspector of Police, Karur***, reported in **2021 0 Supreme [Mad] 555**, has held as follows:

“(9) ... with regard to quashing of the charge sheet for the offence under Section 188 IPC, this Court in ***Jeevanandam***



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and others Vs. State rep. by the Inspector of Police reported in 2018-2-L.W.(CrI) 606 has relied a judgment in V.Gowthaman and others Vs. State rep. by its Inspector of Police, St.Thomas Mount Police Station, Chennai reported in '2018 (4) CTC 252' and held that the cognizance taken by the Magistrate under Section 188 IPC is not permissible and therefore, the prosecution of the accused under Section 188 IPC stands quashed."

10. Similarly, as regards the offence of wrongful restraint under Section 126(2) BNS, except a bald allegation, there is no concrete material or allegation to show in what way the petitioner and others restrained the public from entering into the Police Station. The FIR has been registered on 05.12.2024 and till now, there is no progress and no statement has been obtained from any member of public, or individual or vehicle driver as to whether they were prevented or criminally restrained from proceeding further, in order to attract the offence under Section 126(2) BNS.

11. Further, insofar as the offence of obstructing public servant from



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discharging his public functions under Section 221 BNS, there is no whisper in the entire FIR as to the nature of obstruction created by the accused against the public servant from discharging their duties. It can be seen from the FIR that the petitioner and others have approached the Police Station for lodging a complaint as against an individual. However, since admittedly there was a delay in receiving the complaint, it appears there broke out a protest in front of the Police Station. Therefore, there is nothing to infer from these allegations that the Police officers were obstructed from discharging their official duty. Hence, the entire FIR does not make out any offence even under Section 221 BNS.

12.In view of the above, this Court is of the view that the entire FIR, when read in entirety, does not make out any offence as alleged by the prosecution. Mere launching of FIR by the prosecution itself is not sufficient to arrive at a conclusion that the offences are made out, particularly when the entire allegations in the FIR do not support their case. Further, it appears that, after registration of FIR on 05.12.2024, the same has been received by the learned Magistrate only after three months, i.e., on 27.03.2025. Even thereafter, there is no progress. This aspect also cannot



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be ignored. When the allegations made in the First Information Report, 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, continuing prosecution without any materials, is clear abuse of process of law, and therefore, it is fit case to quash the entire FIR, as per the dictum of the Hon'ble Supreme Court in *State of Haryana and others v. Bhajan Lal and others* reported in *1992 Supp (1) Supreme Court Cases 335*.

13. Accordingly, this Criminal Original Petition is allowed and the FIR in Crime No.721 of 2024 on the file of the Vaniyambadi Town Police Station, is quashed. Consequently, connected miscellaneous petition is closed.

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Internet : Yes

Index : Yes / No

Speaking order : Yes / No

Neutral Citation : Yes / No

To

1. The Judicial Magistrate,

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- Vaniyambadi.
- 2.The Inspector of Police,
Vaniyambadi Town Police Station,
Thirupathur District.
 - 3.The Special Sub-Inspector of Police,
Vaniyambadi Town Police Station,
Thirupathur District.
 - 4.The Public Prosecutor,
High Court, Madras.

N. SATHISH KUMAR, J.

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