



Crl.O.P.No.17853 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.08.2022

CORAM

THE HONOURABLE MR. JUSTICE N. SATHISH KUMAR

Crl.O.P.No.17853 of 2022  
and Crl.MP.Nos.11375 & 11379 of 2022

1. Aravinth
2. Kasirajan
3. Mohamed Ashik
4. Balu
5. Prabakaran
6. Nethaji
7. Lakshmanan
8. Parthiban
9. Manoj Kumar
10. Yuvaraj
11. Manikandan

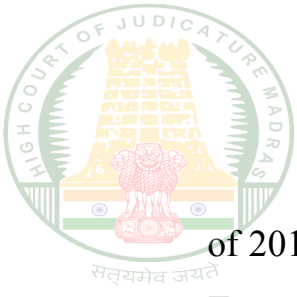
... Petitioners

-Vs-

The State Rep.by  
Inspector of Police,  
B2, Esplanade Police Station,  
Chennai.  
Crime No.447 of 14

... Respondent

**Prayer:** Criminal Original petition filed under Section 482 of the Code of Criminal Procedure to call for the records relating to the C.C.No.2309



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of 2016, on the file of the Metropolitan Magistrate Court No.VII, George Town, Chennai and to quash the same.

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For Petitioners : Mr.R.Thamarai Selvan

For Respondent : Mr.Leonard Arul Joseph Selvam  
Govt.Advocate (Crl.side)

### **ORDER**

This Criminal Original Petition has been filed to call for the records relating to the C.C.No.2309 of 2016 for the offence under Sections 143, 145 r/w 149 of IPC and Sec.7(1) (a) Criminal Law Amendment Act, 1932 and 41 Cp Act 1988 on the file of the Metropolitan Magistrate Court No.VII, George Town, Chennai and to quash the same.

2. The crux of the case of the prosecution is that on 17.03.2014, the petitioners who are studying in a Law College along with their friends without obtaining permission have gathered opposite to Chennai Ambedkar Government Law College and raised a slogan against "Srilankan Government, demanding their Tamil Ealam issues" and blocked the road besides they have also wrongfully restrained movement



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of the public and thereby committed the offence under aforesaid sections.

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3. The learned counsel for the petitioners submitted that the petitioners have gathered and raised slogans against Srilankan Governmnet, demanding their Tamil Ealam Issues and they have also sought justification in International Court against the President of the neighbouring country. Except the present case no other allegation before made against these petitioners and they made such protest in a democratic way and even when the entire prosecution case taken as a face value, the same would not constitute any offence and continuing the prosecution is nothing but abuse of process of law. Therefore, submitted that the same may be quashed.

4. The learned Government Advocate [Criminal Side] submitted that the accused illegally assembled and caused disruption to the public, thereby they have been prosecuted.

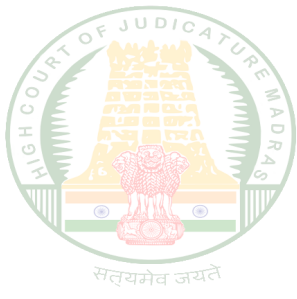
5. It is to be noted that while exercising the power under Section 482 of Cr.P.C., the Court should be slow, at the same time, if the Court



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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 no prudent person*



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*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:

*'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*



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*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 of 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



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prosecution is nothing but an abuse of process of law.

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9. Accordingly, this Criminal Original Petition is allowed and the final report filed against the petitioners pending on the file of the learned Metropolitan Magistrate No.VII, George Town, Chennai in C.C.No.2309 of 2016 for the offences under sections 143, 145 r/w 149 of IPC and Sec.7(1) (a) Criminal Law Amendment Act, 1932 and 41 Cp Act 1988 has been quashed. Consequently, connected miscellaneous petitions are closed.

**01.08.2022**

Index : Yes/No  
Internet : Yes/No  
Speaking/Non speaking order  
dpq

To

1. The Metropolitan Magistrate Court No.VII,  
George Town, Chennai.
2. The Public Prosecutor,  
High Court, Madras.

**N. SATHISH KUMAR,J.**



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