

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.08.2015

Date of Reserving the Order	Date of Pronouncing the Order
10.07.2015	12 .08.2015

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.No.9079 of 2015 &
M.P.No.1 of 2015
R.A.Nos.66 & 67 of 2015

Popular Front of India,
Represented by its State General Secretary,
Sheik Mohammed Ansari,
Purasaiwakkam,
Chennai.

... Petitioner in W.P.No.9079/2015
Vs.

1.The Chief Secretary,
Government of Tamil Nadu,
Fort St., George,
Chennai - 600 009.

2.The Home Secretary,
Government of Tamil Nadu,
Fort St., George,
Chennai - 600 009.

3.The Director General of Police,
Tamil Nadu Police Head Quarters,
Kamarajar Salai,
Chennai - 600 004.

4.S.George,
Commissioner of Police,
Chennai City,
Chennai.

... Respondents in W.P.No.9079/2015

1.Director General of Police,
DGP Office,
Beach Road, Chennai.

2.The Superintendent of Police,
District Police Office,
Dindigul.

3.The Deputy Superintendent of Police,
(Law and Order),
Dindigul Division,
Dindigul District.

4.The Sub Inspector of Police,
South Police Station,
Dindigul District.

... Applicant in R.A.No.66 of 2015

1.Director General of Police,
DGP Office,
Beach Road, Chennai.

2.The Commissioner of Police,
C.O.P.Office,
Chennai.

... Applicant in R.A.No.67 of 2015

Vs

Popular Front of India,
Represented by its State General Secretary,
Sheik Mohammed Ansari,
Purasaiwakkam,
Chennai.

... Respondent in both R.As.,

Prayer in W.P.No.9079 of 2015 :-Petition filed under Article 226 of the Constitution of India praying to issue Writ of Mandamus directing 1 to 3 for initiating disciplinary proceedings this Honourable Court to proceed as per section 195(1)(b) R/w 340 CrPc against the 4th respondent for dereliction of duty in accordance with law and for abetment of inducing false representations before this Honourable Court on 17.2.2015 amounting to perjury for this Honourable Court to initiate the legal action under the appropriate provisions of law by enquiring into the same based on the representation dt 12.3.2015.

Common Prayer in R.A.Nos.66 & 67 of 2015:-Review Applications filed under Order XLVII Rule 1 and 2 read with Section 114 of CPC, to review the order dated 17.02.2015 in W.P.Nos.4049 & 4054 of 2015, on the file of this Court.

Prayer in WP.No.4049 of 2015:Petition filed under Article 226 of the Constitution of India praying to issue Writ of Certiorarified Mandamus to call for the records relating to the Na.Ka. Order No.82/Ka.Thu.Ka.Thi. Na.U/ Din/2015 dated 14.2.2015 passed by the 3rd respondent and quash the same and consequently direct the 3rd respondent to grant permission to the petitioner organization for conducting peaceful procession on 17.2.2015 at about 3 pm from Manikundu to Pegampoor Dindugal along with public meeting in

Vathalakundu Road Gindigul on the same day at about 5 pm

Prayer in WP.NO.4054/2015:Petition filed under Article 226 of the Constitution of India Praying to issue Writ of Certiorarified Mandamus to call for the records relating to the proceedings of the impugned order in Na.Ka. Order No. 150/Tha.Pee.2/2015-3 dated 15.02.2015 passed by the 2nd respondent and quash the same and consequently direct the 2nd respondent to grant permission for conducting peaceful procession at Egmore Rajarathinam Stadium along with the Public Meeting on 17.02.2015 at about 3.30 p.m.

For petitioner ... Mr.W.Peter Ramesh Kumar in
W.P.No.9079 of 2015 and respondent in
R.A.Nos.66 & 67 of 2015
For Respondents ... Mr.A.L.Somayajee Advocate General
assisted by
Mr.R.Vijayakumar AGP for RR1to 4 in
W.P.No.9079 of 2015 and Applicants in
R.A.Nos.66 & 67 of 2015

C O M M O N O R D E R

The applicants, who were respondents in W.P.No.4054 of 2015, seek for review of the order, dated 17.02.2015 in W.P.Nos.4049 and 4054 of 2015. The said Writ Petitions were filed by the respondent, an organisation called 'Popular Front of India' to quash the order passed by the Deputy Superintendent of Police, (Law and Order), Dindigul District, dated 14.02.2015, and the order passed by the Superintendent of Police, Dindigul District, dated 15.02.2015, by which the respondent's request for grant of permission to conduct procession on 17.02.2015 was rejected.

2. Both the Writ Petitions were heard together and by common order dated 17.02.2015, the Writ Petitions were dismissed. The respondent organisation preferred W.A.Nos.305 & 306 of 2015, which were disposed of by the Hon'ble Division Bench by common order dated 27.02.2015, holding that the Writ Appeals have become infructuous, as the date proposed for procession is already over. It was made clear that if the respondent organisation makes a representation or application in future, the authorities will consider the same in accordance with law and on its own merit, after recording proper reason and pass orders. It was further observed that if there is certain extraneous material, which requires explanation from the organisation, they must be afforded an opportunity of hearing before taking a decision on the application made therein.

3. It appears that the respondent organisation submitted a representation on 04.03.2015, seeking for permission to conduct a procession on 14.03.2015 at 3.30 P.M. The said representation was taken into consideration and the Commissioner of Police by memo dated 07.03.2015, called upon the respondent organisation to furnish certain details/information on 09.03.2015. The respondent organisation submitted their reply on 09.03.2015. Thereafter, a show cause notice was issued to the respondent organisation on 11.03.2015, affording an opportunity of personal hearing to the respondent organisation on 12.03.2015 at 11.A.M., either to appear by themselves or through their counsel. Pursuant thereto, the Commissioner of Police, Chennai, by order dated 13.03.2015, rejected the request for grant of permission to a procession. It is not known as to whether the respondent organisation has questioned the proceedings, dated 13.03.2015, in the manner known to law.

4. Be that as it may, the Director General of Police, Chennai and the Commissioner of Police, Chennai, have filed the Review Applications to review the orders passed in W.P.Nos.4049 & 4054 of 2015, dated 17.02.2015. The learned Advocate General submitted that on instructions from the second review applicant referred only the criminal cases registered against the members of the respondent association for the offences under Section 307 IPC and not under Section 302 IPC. Further, it is stated that there were three cases registered in connection with the procession which was conducted during 2014 in Kenikarai Police Station for violation of condition imposed by the Police, which led to law and order issues. On these issues, the learned Advocate General seeks for review of the order by effecting correction of the factual error.

5. The learned counsel appearing for the respondent organisation submitted that the Commissioner of Police, has furnished false and misleading information to this Court as Crl.O.P.No.5831 of 2014 was allowed and Crime No.67 of 2014 was quashed and Crime No.68 of 2014, is a false complaint and in this regard reference has been made to an affidavit filed in HCP(MD).No.180 of 2014. Further, it is submitted that no case of murder has been registered and based on the false and misleading information furnished to this Court, the Writ Petitions were dismissed by order dated 17.02.2015 and therefore, action has to be initiated against the Commissioner of Police, Chennai, and for which the respondent organisation has filed W.P.No.9079 of 2014, praying for a direction to the respondents 1 to 3 therein to initiate disciplinary proceedings and to proceed as per Section 195(1)(b) read with Section 340 Cr.P.C., against the Commissioner of Police for dereliction of duty and for making false representation before this Court amounting to perjury.

6. The fourth respondent/Commissioner has filed a counter affidavit in W.P.No.9079 of 2014, inter alia contending that without following the procedure laid down under Section 340 Cr.P.C., invoking the jurisdiction of this Court by way of a Writ Petition is not maintainable. Further, it is submitted that permission was sought for by the respondent organisation by petition dated 03.02.2015, to conduct a unity march from Raja Rathinam Stadium to Langs Garden Road, Egmore and to conduct a public meeting. It is submitted that after observing the procedure prescribed under Section 41 of the Chennai City Police Act, 1888, the permission sought for, was rejected by order dated 14.02.2015 taking into consideration the preservation of public peace and public safety. It is further submitted that there is no misleading statement or false statement furnished and the submission was that the case under Section 307 IPC has been registered and not under Section 302 IPC and therefore, the respondents have sought for review of the order passed in W.P.Nos.4049 and 4054 of 2015. It is further submitted that while passing the order dated 14.02.2015, rejecting the permission sought for and in the said order, reference was made to three cases which have been registered in Kenikarai Police Station in connection with the procession conducted in 2014. Further, it is submitted that in Karnataka State in Shivamoga District, Tunga Nagar Police have registered a case under Section 302 IPC against the members of the petitioner organisation. It is submitted that the fourth respondent is a responsible officer and discharging his duties without any bias and the Writ Petition filed by the petitioner organisation is on frivolous and vexatious grounds and liable to be dismissed.

7. Heard the learned counsels appearing for the parties and perused the materials placed on record.

8. The Review Petitions have been filed by the respondents in W.P.Nos.4049 & 4054 of 2015. The learned Advocate General appearing for the Review Petitioners contended that in the order passed by this Court in W.P.Nos.4049 & 4054 of 2015, this Court in paragraph 5, has recorded the submissions made on behalf of the Review Applicants and has stated that even murders have taken place during the last year and considering all factors, the Review Applicants had refused permission to the respondent organisation. It is submitted that the criminal cases registered against the members of the respondent organisation is under Section 307 IPC (attempt to murder) and not under 302 IPC (murder). It is submitted that it has been recorded so in the order dated 16.02.2015, in two places and since it is a factual error, the same may be rectified.

9. Rule 1 of Order 47 CPC deals with application for review of judgment. Under the said Rule any person considering himself aggrieved (i) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred; (ii) by a decree or order from which no appeal is allowed, or (iii) by a decision on a reference from a Court of Small Causes. A person who is aggrieved by

any one of the three above and or on account of some mistake or error apparent on the face of the record may apply for a review of judgment of the Court, which passed the decree or made the order.

10. It is not in dispute that no case under Section 302 IPC was registered. It has to be noted that the Writ Petitions in W.P.Nos.4049 & 4054 of 2015, was heard by this Court on 16.02.2015, which was filed challenging the order dated 15.02.2015. The respondent organisation sought for permission to conduct the procession/meeting on 17.02.2015 i.e., the very next day. Notice was issued to the respondents and the matter was heard and the learned Advocate General assisted by learned Additional Government Pleader as well as learned Special Government Pleader appeared before this Court and made oral submissions. No counter affidavit was filed nor could have been filed, since the Writ Petitioner prayed for urgent orders in the Writ Petitions as they wanted to conduct the procession/meeting on the very next day. In such scenario, the Court heard the oral submissions on either side perused the materials placed before this Court and passed orders on 17.02.2015 dismissing the Writ Petitions. The order passed in the Writ Petition has become final, as the appeals filed against the said order have been dismissed by the Hon'ble Division Bench in W.A.Nos.305 & 306 of 2015, dated 27.02.2015. Though the appeals have been dismissed as having become infructuous on the date when the Hon'ble Division Bench heard the matter, the Hon'ble Division Bench granted liberty to the respondent organisation to seek for fresh permission. Thus, when it is not in dispute, that there was no case under Section 302 IPC registered and if the same has been so stated in the order dated 17.02.2015, it has to be necessarily held that it is the factual error which is apparent on the face of the record and requires to be corrected.

11. The learned counsel appearing for the respondent organisation argued that the review applicants had mislead the Court by making such an averment. In my view there is no such material to conclude that there was any misleading submissions made before the Court, which had lead to the dismissal of the Writ Petitions. Therefore, this Court is not inclined to accept the submission of the respondent organisation in this regard.

12. Furthermore, it has to be pointed out that the Court examined the contentions and observed that the right to freedom of speech and expression and the right to assemble peacefully without arms are fundamental rights guaranteed under Article 19(1)(a)&(b) of the Constitution of India and this right is however subject to the restrictions provided under clauses (2) & (3) of Article 19 of the Constitution. It was further pointed out that to be a reasonable restriction, with regard to Article 19(1)(a) it should have nexus with public order, decency, morality, incitement to an offence, contempt of court, defamation, friendly relation with foreign states and interest of sovereignty and integrity of India. Sofar as the

reasonable restrictions with relation to the right under Article 19 (1)(b), it should have nexus with regard to the interests of the sovereignty and integrity of India or public order or morality.

13. Bearing the legal principle in mind, this Court examined the matter and this Court held that the intelligence report cannot be discredited as being of general in nature, and this Court is not inclined to sit as an appellate authority over the decision of the law enforcing agency. Thus, the reason for dismissing the Writ Petitions is not only on the ground that a case under Section 302 IPC was alleged to have been registered, but this Court considered the matter on a larger perspective bearing in mind the public order, safety etc. It is submitted that the FIR registered in Crime No.67 of 2014, has been quashed by the Madurai Bench of this Court and the other criminal case registered in Crime No.68 of 2014 was closed and the same could not have been the sole basis for arriving at a different conclusion. In fact when the submissions were made by the State, the respondent organisation was also heard in the matter. In such circumstances, it is too late for the respondent organisation to now state that these issues, which are now being pointed out, would be mitigating factors to hold that the Commissioner of Police is guilty of suppression of fact.

14. As pointed out earlier in terms of the liberty granted by the Hon'ble Division Bench, the respondent organisation applied for grant of fresh permission and such request was rejected by order dated 13.03.2015, after affording an opportunity to the respondent organisation. Thus in view of the subsequent development of the matter at the behest of the respondent organisation, they are not entitled to now seek for any direction to proceed against the officials under Section 195(1)(b) read with Section 340 Cr.P.C.

15. In order to proceed under Section 195, the procedure under Section 340 Cr.P.C., is mandated. Sub-section (1) of Section 340 Cr.P.C., states that when, upon an application made to it in this behalf or otherwise, any Court is of opinion that it is expedient in the interest of justice that an inquiry should be made into any offence referred to in Section 195(1)(b), which appears to have been committed in or in relation to a proceeding in that Court or, as the case may be, in respect of a document produced or given in evidence in a proceeding in that Court, such Court may, after such preliminary inquiry, if any, as it thinks necessary, do the acts enumerated in clauses (a) to (e) in Section 340 Cr.P.C. For the reason stated in the preceding paragraphs, this Court is fully convinced that the Commission of any offence under Section 195(1)(b), does not arise for initiation of proceedings under the said provision.

16. For all the above reasons, Review Application Nos.66 & 67 of 2015 are allowed and W.P.No.9079 of 2015 is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Asst.Registrar (CS III)

/true copy/

Sub Asst. Registrar

To

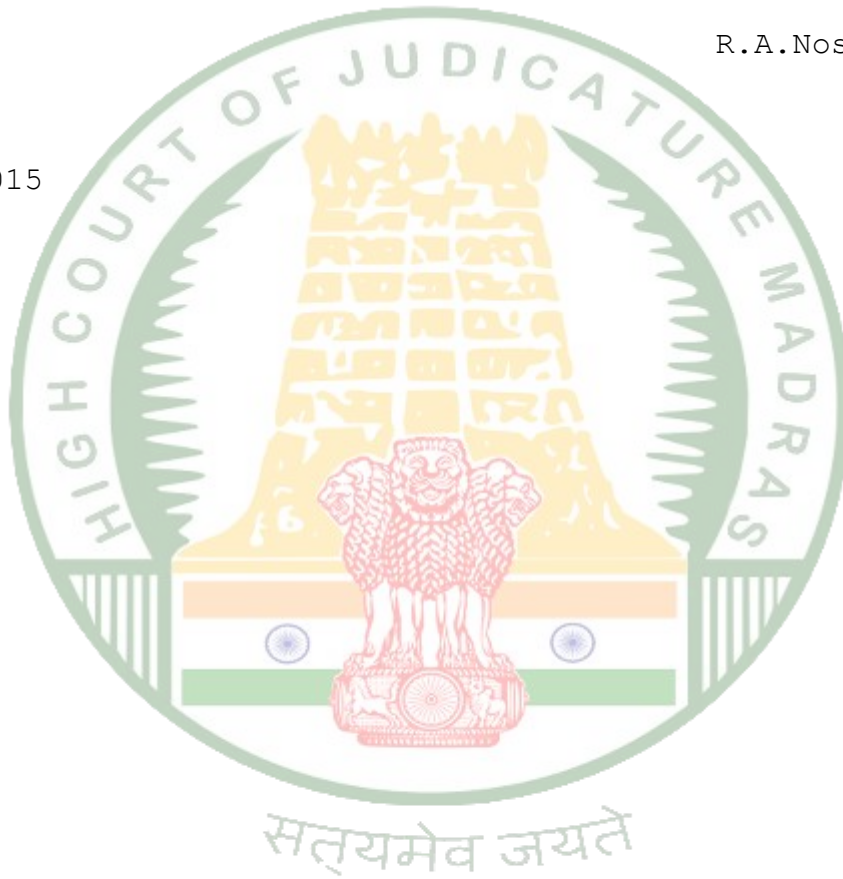
- 1.The Chief Secretary,
Government of Tamil Nadu,
Fort St., George,
Chennai - 600 009.
- 2.The Home Secretary,
Government of Tamil Nadu,
Fort St., George,
Chennai - 600 009.
- 3.The Director General of Police,
Tamil Nadu Police Head Quarters,
Kamarajar Salai,
Chennai - 600 004.
- 4.The Superintendent of Police,
District Police Office,
Dindigul.
- 5.The Deputy Superintendent of Police,
(Law and Order),
Dindigul Division,
Dindigul District.
- 6.The Sub Inspector of Police,
South Police Station,
Dindigul District.

7.The Commissioner of Police,
C.O.P.Office,
Chennai.

+1 cc to Mr.W.Peter Ramesh Kumar Advocate sr.42517

W.P.No.9079 of 2015 &
M.P.No.1 of 2015
R.A.Nos.66 & 67 of 2015

aa26/08/2015



WEB COPY