

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**Crl.O.P.No.22168 of 2010
and
M.P.No.1 of 2010**

S.Prasath

... Petitioner

State rep. by
The Inspector of Police,
Chidambaram Town Police Station,
Chidambaram,
Cuddalore District.

vs.

... Respondent

Prayer: Criminal Original Petitions filed under Section 482 of Cr.P.C., to call for the records and quash the charge sheet in C.C.no.138 of 2009 pending on the file of the learned Judicial Magistrate No.2, Chidambaram.

For Petitioner

: Mr.R.Vivekananthan
for Mr.R.Sagadevan

For Respondents

: Mr.B.Ramesh Babu
Government Advocate (Crl.Side)

JUDGMENT

The petitioner who is arrayed as 13th accused for the offence under Sections 14, 148, 341, 358, 332, and 506(ii) of IPC followed by the registration of the F.I.R. in Crime No.63 of 2008 dated 03.03.2008 on the file of the respondent has filed the instant quash petition.

2.The case of the petitioner is that as far as Crime No.63 of 2008, on the file of the respondent, the First Information Report was registered against nearly about 250 persons. At the completion of the investigation, final report was filed as against 34 accused. The petitioner has been arrayed as accused No.13 in the Final Report and the same was taken on file by the learned Judicial Magistrate No.2, Cidhambaram. The further case of the petitioner is that at the time of occurrence he was working as Postal Assistant in Virudhachalam Post Office. On the day of the occurrence that is on 02.03.2008, at about 4.30 p.m., he was about to enter into the Cidhambaram Natarajar Temple to sing Thevaram and Thiruvagasam at Thirucitrambalamedai based on Government Order of State of Tamil Nadu. In that melee, the Police resorted Lathi charge and inflicted injuries to several persons.

3.Further, without ascertaining the facts, the Police registered the First Information Report as against 250 persons. At the completion of the investigation, charge sheet was filed as against 34 accused including the petitioner as A-13 and the learned Judicial Magistrate No.II, Chidhambaram has taken on file as Calendar Case No.138 of 2009.

4.Per contra, the learned Government Advocate (Criminal Side) would submit that though the Government Order was passed in G.O.Ms.No. 53 of 2008 dated 29.02.2008. The said Arumugasamy and his supporters disturbed the public and tried to resort violence. Therefore, the filing of the First Information Report including the final report is justifiable. At the same time, he has accepted the order passed by the learned Judicial Magistrate No.2, Chidhambaram in CrI.M.P.No.5074-(A) of 2016 in C.C.No.138 of 2009 discharged as many as 12 accused under Section 239 of Cr.P.C on the strength of the letter written by the Annamalai Nagar Police Inspector dated 03.03.2008. In the letter, he informed the aforesaid Magistrate Court that the said Arumugasamy did not resort to disturb the law and order and he has not committed any offence. This fact was taken up for consideration and order was passed to discharge 12 accused from the charge.

5.I heard Mr.R.Vivekanandhan for Mr.R.Sagadevan, learned counsel appearing for the petitioner and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) appearing for the respondent and perused all the materials available on record.

6.The learned counsel appearing for the petitioner would submit that though final report is filed as against 34 accused, the role alleged played by them is admittedly inseparable. Once the respondent/complainant has come out with a case that the said Arumugasamy did not resort to disturb the law and order and on that basis some 12 accused have been discharged, the very same yard-stick is to be applied to all the accused including the petitioner.

7.The contention raised by the learned counsel for the petitioner is justifiable and as for as the offence under Section 149 of IPC is concerned, no accused can be separated from the gatherings. Once, the Government has come out with a case before learned trial Court that the accused have not committed any offence, the same thing is to be extended to the petitioner also. This Court finds that the reasons adduced in the grounds of the quash petition are entitled to be taken up for consideration positively.

8.In the result, for the forgoing reasons this Court has no hesitation to quash proceedings in C.C.No.138 of 2009, on the file of the learned Judicial Magistrate No.2, Chidambaram and the Criminal Original Petition is allowed. Accordingly, the same is quashed. Consequently, connected miscellaneous petition is closed.

11.04.2017

Note:Issue order copy on 08.08.2017

Internet : Yes/No

Index : Yes/No

vs

To

The Judicial Magistrate No.2,
Chidambaram



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M.V.MURALIDARAN,J.

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