IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.02.2017

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THE HONOURABLE MR. JUSTICE R.MAHADEVAN

Crl.O.P.No.6611 of 2016

and

Crl.MP No.3442 of 2016

Satya Balan ... Petitioner/Accused 6

Vs

State represented by
Inspector of Police,
B-15, Rathnapurai Police Station,
Coimbatore District. ... Respondent/Complainant

Criminal Original Petition filed under Section 482 Cr.P.C. to call for the connected records in P.R.C No.45 of 2015 on the file of the Judicial Magistrate No.II, Coimbatore and quash the same as illegal.

For Petitioner : Mr.R.Sankarasubbu
For Respondent : Mr.C.Emalias, APP

ORDER

This Criminal Original Petition has been filed by the petitioner/A6 invoking Section 482 Cr.P.C, with a prayer to quash the criminal proceedings initiated against him in PRC No.45 of 2015 on the file of the leaned Judicial Magistrate No.II, Coimbatore.

2. In nutshell, the prosecution case as reflected from the records, indicates that one V.Paramasivam, NK.1107, driver attached to Motor vehicles Section, Armed Reserve, Coimbatore City, lodged a complaint alleging that on 05.02.2015, at about 11.30am, he came along with a police party to G.P.Signal junction at 100feet road, where, nearly 120 students of Law College, Coimbatore have formed an unlawful assembly and raised

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slogans against the police with regard to an incident took place on 04.02.2015 at Chennai against some law students and tried to cause disturbance to the general public as well as free flow of traffic. At about 1.00pm, the respondent along with the police party dispersed the assembly, arrested them and taken them to a marriage hall, in the course of which, 30 persons were boarded in an Eicher van bearing Regn.No.TN 38 G 0554 which was driven by the complainant, out of which, 7 persons, the petitioner herein is one among them, did not stop the slogans raised against the police and caused damage to the light and seat of that vehicle by their hands and legs. The said complaint was registered as FIR in Crime No.81 of 2015 for the offences punishable under Sections 147 and 427 IPC.

3. After registration of the FIR, the respondent police conducted investigation, during the course of which, he prepared observation mahazar and obtained statement under Section 161(3) Cr.P.C from the witnesses and sent the vehicle for valuation. The value of the damage to the vehicle as assessed by the Engineer was Rs.2,300/-. On completion of the same, charge sheet was filed before the learned Judicial Magistrate No.II, Coimbatore for the offence under Section 147 IPC r/w Section 3 (1) of Tamil Nadu Public Property (Damage and Loss) Act (herein after shortly referred to as 'TNPPDL Act') against those seven persons named in the FIR. The petitioner herein was implicated therein as sixth accused. Subsequently, the charge sheet was taken on file as PRC No.45 of 2015, for the offences as mentioned above and is pending trial, quashment of which is sought for herein.

4. It is contended by the learned counsel for the petitioner that the allegation made against the accused is that they unlawfully assembled and damaged the police vehicle by using their hands and legs. However, the petitioner cannot be liable to be prosecuted for the offences mentioned in the charge sheet, as he is an orthopaedically handicapped person. In support of his contention, learned counsel enclosed a copy of the disability certificate given by the Medical Board, Cuddalore and concession certificate issued by CMC Hospital, Coimbatore, in the typed set of papers filed along with this petition. Learned counsel further submitted that the petitioner has nothing to do with the alleged offences and he has been falsely implicated in this case. Hence, learned counsel sought for quashing the criminal proceedings pending against the petitioner.

5. Learned Additional Public Prosecutor, on the other hand, contended that after thorough investigation, charge sheet was laid against the accused and the same was also taken on file by the trial court as per law, which does not call for any interference by this Court. Therefore, he prayed for dismissal

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of this quash petition.

6. Heard both sides and perused the records.

7. Admittedly, the FIR was registered for the alleged offences punishable under Sections 147 and 427 IPC. After completion of investigation, charge sheet was filed for the offences under Section 147 IPC and Section 3 of TNPPDL Act. As per the prosecution case, there were nearly about 120 students assembled at the spot and 30 persons were boarded in the vehicle in question, out of which, seven persons were charge sheeted for the offences as stated supra. The petitioner herein is the sixth accused.

8. The charges levelled against the accused, including the petitioner herein, are that they were the members of an unlawful assembly and they caused damage to the police vehicle by using their hands and legs, worth about Rs.2,300/-. It is the specific contention of the learned counsel for the petitioner that as the petitioner is an orthopaedically handicapped and he has 85% disability, he was not involved in the commission of the offences as alleged by the prosecution, as such, he cannot be liable to be prosecuted for the same.

9. Now, the point for determination in this petition is, whether the petitioner is liable to be prosecuted for the charges under Section 147 IPC and Section 3 of TNPPDL Act, on the ground that he is an orthopaedically handicapped person.

10. Before going into the issue involved herein, this Court is inclined to first look into the essential ingredients of Section 147 IPC, which provides punishment for rioting, as under:

(i) five or more persons assembled.

(ii) they constitute an unlawful assembly within the meaning of Section 141 IPC.

(iii) the accused was a member of that assembly

(iv) force or violence was used by any member of that assembly.

(v) it was used in prosecution of its common object.

11. Insofar as the present case is concerned, the records produced by the prosecution, such as, FIR, Section 161(3) Cr.P.C statement recorded from the witnesses and charge sheet, would go to show that all the ingredients of section 147 IPC have not been made out against the accused. Though the occurrence took place in a public spot and there were many spectators present, the Investigation Officer has obtained statements only from the police party. The other independent witnesses have narrated the occurrence as tutored by the complainant, as such, there is no independent witness to the occurrence available. Further, the

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prosecution theory that the accused damaged the vehicle by using his hands and legs worth about Rs.2,300/-, would reveal that there is no armed weapon or violence used in prosecution of common object. Therefore, this Court is of the view that there is no iota of evidence against the accused for the commission of the offences as alleged by the prosecution.

12. Even otherwise, the medical certificates enclosed in the typed set of papers would disclose that the petitioner is an orthopaedically handicapped and has sustained 85% disability, as such, it is hardly believable that the petitioner has committed such offences as narrated by the prosecution. In that event, he cannot be held liable to be prosecuted for the charges framed against him.

13. At this juncture, it is pertinent to mention the settled law with regard to exercise of power under Section 482 Cr.P.C, which reads as follows:

> "where the allegations set out in the complaint or the charge sheet do not constitute any offence, it is competent to the High court exercising its inherent jurisdiction under Section 482 of the Code of Criminal Procedure to quash the order passed by the learned Magistrate taking cognizance of the offence."

Applying the said principle to the facts of the present case, this Court is of the view that it is a fit case, wherein, the criminal proceedings initiated against the petitioner is liable to be quashed.

14. Accordingly, this Criminal Original Petition is allowed and the criminal proceedings in PRC No.45 of 2015 on the file of the learned Judicial Magistrate No.II, Coimbatore is quashed insofar as the petitioner is concerned. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1.Judicial Magistrate No.II, Coimbatore.

2.Inspector of Police,
B-15, Rathnapurai Police Station,
Coimbatore District.

3 The Chief Judicial Magistrate, Coimbatore

4.The Public Prosecutor, High Court, Madras.

+1cc to Mr.R. Sankarasubbu, Advocate, S.R.No.8404

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md(07/03/2017)

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