

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2018

CORAM

THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

CrI.O.P.No.27832 of 2018

and

CrI.M.P.Nos.16137 and 16139 of 2018

K.N.Nehru

... Petitioner

Vs.

K.M.Sivakumar
Inspector of Police,
Gandhi Market Police Station,
Trichy.

...Respondent

Prayer: This Criminal Original Petition filed under Section 482 Cr.P.C. to call for the records in C.C.No.22 of 2018 on the file of the learned Sessions Judge, Special court for trial of criminal cases related to elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai and quash the charge sheet.

For Petitioner : Mr.N.R.Elango, Senior Counsel
For Mr.R.Baskaran

For Respondent : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

सत्यमेव जयते
O R D E R

This petition has been filed to call for the records and quash the proceedings in C.C.No.22 of 2018 on the file of the learned Sessions Judge, Special Court for trial of Criminal Cases related to elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai.

2. The respondent police had initially registered an F.I.R. for offences under Sections 143 and 188 of IPC as against 10 named accused persons and others. This F.I.R. has been registered based on the complaint of the Inspector of Police, Mr.K.M.Sivakumar and it is evident from the signature of the officer in charge of the police station. The same police officer

has investigated the case, taken statement from the witnesses and has also filed a final report before the Court below. The Court below has taken cognizance of the final report for offences under Sections 143 and 353 of IPC.

3. The learned Senior counsel for the petitioner primarily raised two grounds to quash the final report.

4. The first ground that has been raised by the learned Senior counsel is that the police officer who had registered the F.I.R., had also investigated the case, recorded the statement of the witnesses and has also filed the final report and therefore, the entire investigation is vitiated. The learned Senior Counsel, in order to substantiate his argument, brought to the notice of this Court, the recent judgment of the Hon'ble Supreme Court reported in 2018-2-L.W.(Crl.)596 (Mohan Lal Vs. The State of Punjab). In the said judgment, the Hon'ble Supreme Court has held that in a criminal prosecution, the informant and the investigating officer cannot be a same person and if such an investigation is made, it vitiates the entire investigation.

5. The second ground that has been raised by the learned Senior Counsel for the petitioner is that, even the entire reading of the allegation in the final report does not make out for an offence under Section 353 of IPC. The learned Senior counsel would submit that the allegation that has been made in the final report would show that the petitioner and others were agitating against the demonetization and the respondent police had stopped them by stating that no permission has been obtained from the respondent police for the purpose of conducting the agitation.

6. The learned Senior counsel would submit that in order to constitute an offence under Section 353 of IPC, it must be shown that there was an assault or a criminal force that was used by the petitioner and the ingredients of Section 350 and 351 of IPC will have to be satisfied. The learned Senior Counsel would submit that none of these ingredients have been satisfied in the present case.

7. The learned Additional Public Prosecutor would submit that, even though initially an F.I.R. was registered under Sections 188 and 143 of IPC, in the course of investigation, necessary materials were collected by the respondent police and ultimately final report came to be filed for offences under Sections 143 and 353 of IPC.

8. The learned Additional Public Prosecutor would further submit that there are prima facie materials for the Court below to frame the charges and therefore, this Court should not

interfere with the proceedings at this stage.

9. This Court carefully considered the arguments made on either side.

10. In the considered view of this Court, the proceedings pending before the Court below has to be quashed primarily on the ground that the complainant and the investigation officer in this case is the same person. The same Investigation Officer has also recorded the statement of the witnesses and therefore, the entire investigation stands vitiated. The judgment relied upon by the learned Senior Counsel, referred supra, clearly applies to the facts of the case. The Hon'ble Supreme Court held that in a criminal prosecution, the informant and the Investigation Officer can never be the same person and if the informant and the Investigation Officer is the same person, the entire investigation is vitiated.

11. In view of the above, the proceedings before the Court below cannot be sustained and the same requires interference by this Court, in exercise of jurisdiction under Section 482 of Cr.P.C.

12. In the result, the proceedings in C.C.No.22 of 2018 on the file of the learned Sessions Judge, Special Court for trial of Criminal cases related to elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai, is hereby quashed.

13. Accordingly, the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar

//True copy// सत्यमेव जयते

Sub Assistant Registrar

rli/vsa

To

1.The Sessions Judge,
Special court for trial of criminal cases related to elected
Members of Parliament and Members of Legislative Assembly of
Tamil Nadu, Chennai.

2.The Inspector of Police,
Gandhi Market Police Station,
Trichy.

3.The Additional Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Baskaran, Advocate SR.No.82746

+1cc to Public Prosecutor SR.No.82397

Crl.O.P.No.27832 of 2018
and

Crl.M.P.Nos.16137 and 16139 of 2018

GMV (27/12/2018)



WEB COPY