

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.5960 of 2019
and Crl.M.P.Nos.3353 & 3354 of 2019

S.Inbakkani

.. Petitioner /
Accused No.1

Vs.

1. The Inspector of Police,
F-2, Egmore Police Station,
Law and Order,
Egmore,
Chennai - 600 008.
(Crime No.600 of 2017)

..1st Respondent /
Complainant

2. K.Settu

..2nd Respondent /
Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the Charge Sheet in ***C.C.No.7301 of 2017** on the file of Learned XIV Metropolitan Magistrate, Chennai in Crime No.600 of 2017 on the file of the 1st Respondent and Quash the same.

For Petitioner : Mr.S.Kumaradevan

For RR1 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

ORDER

This petition has been filed to call for the records relating to the Charge Sheet in ***C.C.No.7301 of 2017** on the file of Learned XIV Metropolitan Magistrate, Chennai in Crime No.600 of 2017 on the file of the 1st Respondent.

2. The case of the prosecution is that on 10.03.2017, at 10.30 a.m., under the head of the petitioner 70 persons of Dravidar Kazhagam without any prior permission staged a demonstration in front of Maniammai Statue situated nearby Egmore North Railway Station and were trying to burn the copies

of the "Manu Dharma Sasthra". Further when other persons were dispersed by the Police the petitioner and other four persons tried to conduct a train picket struggle. On the basis of the above said allegations, the respondent police registered the complaint and filed a charge sheet against the petitioner and others for the offences under Sections 353 I.P.C. and Section 7 (1) of Criminal Law Amendment Act, 2005 in ***C.C.No.7301 of 2017**, on the file the learned XIV Metropolitan Magistrate Court, Egmore.

3.The learned counsel appearing for the petitioner submitted that the petitioner is a social activist and has been raising voice for the public cause and public welfare, whenever injustice and inaction of the government machineries. In order to draw the attention of the Central and State Governments, the petitioner along with other persons staged a demonstration in front of Maniammai Statue situated nearby Egmore North Railway Station. The learned counsel further submitted that the Hon'ble Supreme Court of India has held that the right to freely assemble and also right to freely express one's view or constitutionally protected rights under Part III and their enjoyment can be only in proportional manner through a fair and non-arbitrary procedure provided in Article 19 of Constitution of India. He further submitted that it is the duty of the Government to protect the rights of freedom of speech and assemble that is so essential to a democracy. Further he submitted that the petitioner or any other members had never involved in any unlawful assembly and there is no evidence that the petitioner or others restrained anybody. However, the officials of the respondent police had beaten the petitioner and others. When there was lot of members involved in the protest, the respondent police had registered this case Sections 353 I.P.C. and Section 7(1) of Criminal Law Amendment Act, 2005 as against the petitioner and others. Therefore, he sought for quashing the proceeding.

4.Per contra, the learned Additional Public Prosecutor submitted that the petitioner along with others staged protest and there are specific allegations as against the petitioner to proceed with the trial. More over, the petitioner is an habitual offender by committing this kind of crimes. Therefore, he vehemently opposed the quash petition and prayed for dismissal of the same.

5.Heard Mr.S.Kumaradevan, learned counsel for the petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the 1st respondent.

6.On perusal of the charge, it is seen that the petitioner and others staged a demonstration in front of Maniammai Statue

situated nearby Egmore North Railway Station, without getting prior permission from the concerned authority. Therefore the respondent police levelled the charges under Sections 353 I.P.C. and Section 7(1) of Criminal Law Amendment Act, 2005. as against the petitioner and others. Except the official witnesses, no one has spoken about the occurrence and no one was examined to substantiate the charges against the petitioner. It is also seen from the charge itself that the charges are very simple in nature and trivial. Section 353 of I.P.C. is extracted as follows:

"353. Assault or criminal force to deter public servant from discharge of his duty -

Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."

7. In the case on hand, the First Information Report has been registered by the respondent police for the offences under Sections 353 I.P.C. and Section 7(1) of Criminal Law Amendment Act, 2005. He is not a competent person to register FIR for the offences under Sections 353 I.P.C. and Section 7(1) of Criminal Law Amendment Act, 2005. As such, the First Information Report or final report is liable to be quashed for the offences under Sections 353 I.P.C. and Section 7(1) of Criminal Law Amendment Act, 2005. Further, the complaint does not even state as to how the protest formed by the petitioner and others is an unlawful protest and does not satisfy the requirements of Section 353 of IPC.

8. Accordingly, this Criminal Original Petition is allowed and the proceedings in ***C.C.No.7301 of 2017** on the file of Learned XIV Metropolitan Magistrate, Egmore, Chennai is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

Dated: 10.05.2019

* Amended as per order

in CrI.M.P.Nos.10650/2019

in CrI.O.P.No.5960/2019 dated 02.08.2019

sd/- Assistant Registrar(CS III)

Dated: 02.08.2019

//True Copy//

Sub Assistant Registrar

pds/lok

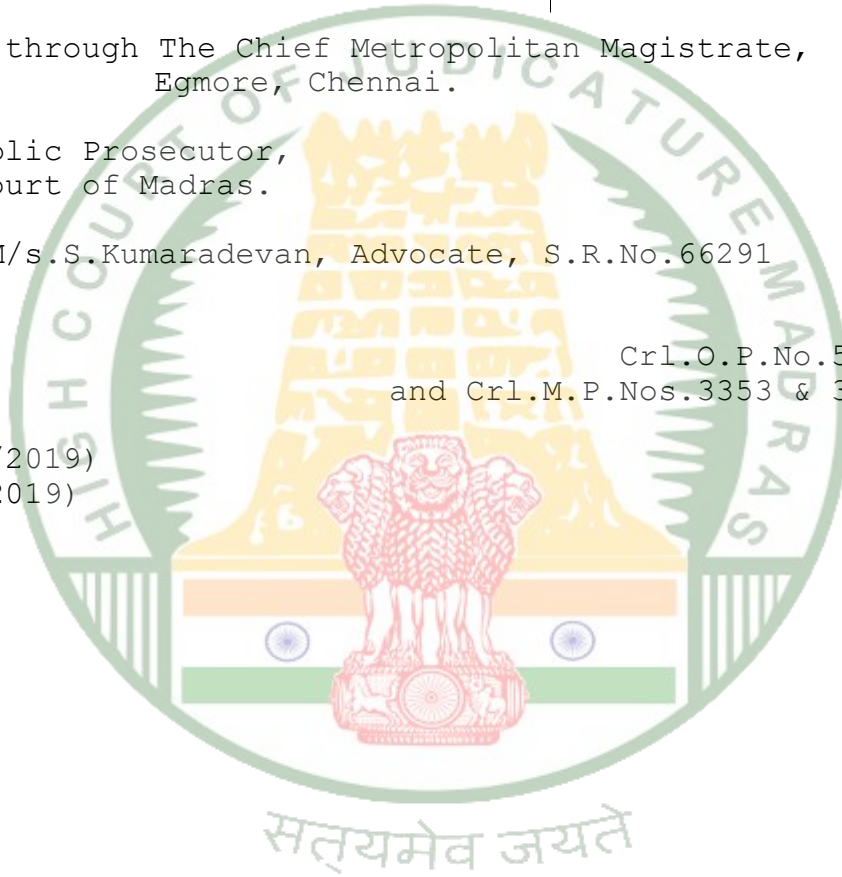
To

1. The Inspector of Police,
F-2, Egmore Police Station,
Law and Order,
Egmore,
Chennai - 600 008.
 2. The XIV Metropolitan Magistrate,
Chennai
 3. - do - through The Chief Metropolitan Magistrate,
Egmore, Chennai.
 4. The Public Prosecutor,
High Court of Madras.
- +1 cc to M/s.S.Kumaradevan, Advocate, S.R.No.66291

To be Substituted to
the order already
despatched on
18.07.2019

RSI (CO)
SSM(20/05/2019)
SP(02/08/2019)

Crl.O.P.No.5960 of 2019
and Crl.M.P.Nos.3353 & 3354 of 2019



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