

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.5961 of 2019
and Crl.M.P.Nos.3355 & 3356 of 2019

1.S.Prince Ennarasu Periyar
2.V.Kalaiarasan
3.R.Karthikeyan
4.K.Selvendhiran
5.M.Bhavani

... Petitioners

Vs.

1. The Sub Inspector of Police,
F-1, Chintadripet Police Station,
Chennai - 600 002.
(Crime No.835 of 2017)

2. N.Prakash

... Respondents

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.8234 of 2017 on the file of Learned XIV Metropolitan Magistrate, Chennai in Crime No.835 of 2017 on the file of the 1st Respondent and Quash the same.

For Petitioners : Mr.S.Kumaradevan

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

ORDER

This petition has been filed to quash the proceedings in C.C.No.8234 of 2017 on the file of the learned XIV Metropolitan Magistrate, Chennai, having been taken cognizance for the offence under Sections 143, 353 I.P.C. and Section 7(1)(a) of Criminal Law Amendment Act.

2. The case of the prosecution is that on 01.09.2017, at 17.30 hrs, under the head of the first petitioner 14 persons without any permission raised slogans as against the Central and State Governments due to death of one Ariyalur Anidha regarding NEET Exam. Further when other persons were dispersed by the

Police the petitioners tried to continue the same. On the basis of the above said allegations, the respondent police registered the complaint and filed a charge sheet against the petitioners and others for the offences under Sections 143 and 188 I.P.C. @ 143, 188 I.P.C. r/w 7(1)A of Criminal Law Amendment Act.

3.The learned counsel appearing for the petitioners submitted that the petitioners are social activists and have 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 petitioners along with other persons raised slogans as against the Central and State Governments due to death of one Ariyalur Anidha regarding NEET Exam. 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 once 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 petitioners or any other members had never involved in any unlawful assembly and there is no evidence that the petitioners 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 under Sections 143 and 188 I.P.C. as against the petitioners and others. Therefore, he sought for quashing the proceeding.

4.Per contra, the learned Additional Public Prosecutor submitted that the petitioners along with others staged protest and there are specific allegations as against the petitioners to proceed with the trial. More over, the petitioners are habitual offenders 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 petitioners and others raised slogans as against the Central and State Governments due to death of one Ariyalur Anidha regarding NEET Exam, without getting prior permission from the concerned authority. Therefore the respondent police levelled the charges under Sections 143 and 188 I.P.C. as against the petitioners and

others. Except the official witnesses, no one has spoken about the occurrence and no one was examined to substantiate the charges against the petitioners. It is also seen from the charge itself that the charges are very simple in nature and trivial. Therefore, it is very clear that for taking cognizance of the offences under Section 188 of IPC, the public servant should lodge a complaint in writing and other than that no Court has power to take cognizance.

7.The learned counsel for the petitioners relied upon a judgement in Mahaboob Basha Vs. Sambanda Reddiar and others reported in 1994(1) Crimes, Page 477. He also relied upon a judgment in a batch of quash petitions, reported in 2018-2-L.W. (Cr1.) 606 in Cr1.O.P. (MD)No. 1356 of 2018, dated 20.09.2018 in the case of Jeevanandham and others Vs. State rep. by the Inspector of Police, Karur District, and this Court held in Paragraph-25, as follows :-

"25.In view of the discussions, the following guidelines are issued insofar as an offence under Section 188 of IPC, is concerned:

a) A Police Officer cannot register an FIR for any of the offences falling under Section 172 to 188 of IPC.

b) A Police Officer by virtue of the powers conferred under Section 41 of Cr.P.C will have the authority to take action under Section 41 of Cr.P.C., when a cognizable offence under Section 188 IPC is committed in his presence or where such action is required, to prevent such person from committing an offence under Section 188 of IPC.

c) The role of the Police Officer will be confined only to the preventive action as stipulated under Section 41 of Cr.P.C and immediately thereafter, he has to inform about the same to the public servant concerned/authorised, to enable such public servant to give a complaint in writing before the jurisdictional Magistrate, who shall take cognizance of such complaint on being prima facie satisfied with the requirements of Section 188 of IPC.

d) In order to attract the provisions of Section 188 of IPC, the written complaint of the public servant concerned should reflect the following ingredients namely;

i) that there must be an order promulgated by the public servant;

ii) that such public servant is lawfully

empowered to promulgate it;

iii) that the person with knowledge of such order and being directed by such order to abstain from doing certain act or to take certain order with certain property in his possession and under his management, has disobeyed;

and

iv) that such disobedience causes or tends to cause;

(a) obstruction, annoyance or risk of it to any person lawfully employed; or

(b) danger to human life, health or safety; or

(c) a riot or affray.

e) The promulgation issued under Section 30(2) of the Police Act, 1861, must satisfy the test of reasonableness and can only be in the nature of a regulatory power and not a blanket power to trifle any democratic dissent of the citizens by the Police.

f) The promulgation through which, the order is made known must be by something done openly and in public and private information will not be a promulgation. The order must be notified or published by beat of drum or in a Gazette or published in a newspaper with a wide circulation.

g) No Judicial Magistrate should take cognizance of a Final Report when it reflects an offence under Section 172 to 188 of IPC. An FIR or a Final Report will not become void ab initio insofar as offences other than Section 172 to 188 of IPC and a Final Report can be taken cognizance by the Magistrate insofar as offences not covered under Section 195(1) (a) (i) of Cr.P.C.

h) The Director General of Police, Chennai and Inspector General of the various Zones are directed to immediately formulate a process by specifically empowering public servants dealing with for an offence under Section 188 of IPC to ensure that there is no delay in filing a written complaint by the public servants concerned under Section 195(1) (a) (i) of Cr.P.C.

8. In the case on hand, the First Information Report has been registered by the respondent police for the offences under Sections 143 and 188 IPC. He is not a competent person to

register FIR for the offences under Section 188 of IPC. As such, the First Information Report or final report is liable to be quashed for the offences under Section 188 of IPC. 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 143 of IPC.

9. Accordingly, the proceedings in C.C.No.8234 of 2017 on the file of Learned XIV Metropolitan Magistrate, Chennai is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (AD-IV)

//True Copy//

Sub Assistant Registrar

pds/lok

To

1.The Sub Inspector of Police,
F-1, Chintadripet Police Station,
Chennai - 600 002.

2.The XIV Metropolitan Magistrate,
Chennai

3.The Public Prosecutor,
Hight Court of Madras.

+1 cc to Mr.S.Kumaradevan, Advocate, S.R.No.20684

CrI.O.P.No.5961 of 2019

and CrI.M.P.Nos.3355 & 3356 of 2017

RK(CO)
SSM(24/05/2019)

WEB COPY