

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P. No. 17503 of 2014  
and  
M.P. Nos. 1 & 2 of 2014

Karikalan .....Petitioner/8<sup>th</sup> Accused

Vs.

State by Inspector of Police  
Hasthampatti Police Station  
Salem District. .... Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in respect of the charge sheet in C.C. No.209 of 2008 pending on the file of Judicial Magistrate III, Salem and quash the same against the petitioner is concerned.

For Petitioner : Mr.R.Nalliyappan

For Respondent : Mr.M.Mohamed Riyas  
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.209 of 2008 on the file of the Judicial Magistrate III, Salem, thereby having been taken cognizance for the offences under Sections 143, 153 and 285 of I.P.C as against the petitioner.

2.The case of the prosecution is that on 07.12.2006, around 19.00 hours, the petitioner and 12 others alleged to have formed themselves into a an unlawful group and thereby protested against Barathiya Janatha Party and set fired the said political party's flag. On the basis of the above said allegation, the respondent police registered the complaint and filed a charge sheet against the petitioner and 12 others for the offences under Sections 143, 153 and 285 of IPC in C.C.No.209 of 2008, on the file of the learned Judicial Magistrate III, Salem.

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 12 members had protested against the said political party. 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 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, under Section 143, 153 and 285 of IPC 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. Further, he would submit that it is the duty of the police to register a case. Therefore, he vehemently opposed the quash petition and prayed for dismissal of the same.

5.Heard Mr.R.Nalliyappan, learned counsel for the petitioner and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the respondent.

6.On perusal of the charge, it is seen that the petitioner and others have formed themselves into an unlawful group and thereby protested against Barathiya Janatha Party without getting prior permission from the concerned authority. Therefore the respondent police levelled the charges under Sections 143, 153 and 285 of I.P.C. 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.

7. 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. Therefore, the final report cannot be sustained and it is liable to be quashed.

8. Accordingly, the proceedings in C.C.No.209 of 2008 on the file of the learned Judicial Magistrate III, Salem is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS iv)

//True Copy//

Sub Assistant Registrar

pds/lok

To

1. The Judicial Magistrate III,  
Salem

2. Inspector of Police  
Hasthampatti Police Station  
Salem District.

3. The Public Prosecutor,  
High Court of Madras

CrI.O.P. No. 17503 of 2014

sj (CO)

A.SK(22/04/2019)

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