

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.11.2019
PRONOUNCED ON : 17.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

Crl.O.P.No.32118 of 2019
and
Crl.M.P.Nos.17649 of 2019

R.Krishnakumar Petitioner / Accused No.17

/vs./

The State
Represented by
Deputy Superintendent of Police,
Crime Branch - CID Metro I Unit,
Egmore, Chennai - 600 008. Respondent

PRAYER: Petition filed under Section 482 of Criminal Procedure Code, to call for the records in connection with the calendar case in No.6756/2018 pending on the file of Special Court for trial in CCB and CBCID, Egmore.

For Petitioner: Mr.S.Prabhakaran
Senior Counsel
& Mr.N.G.R.Prasath for Mr.D.Nitin

For Respondent: Mr.C.Iyyapparaj
Additional Public Prosecutor

ORDER

The case of the prosecution is as follows:

(i) On 04.04.2015, at about 08.30 p.m., about 100 persons, who are practising Advocates of the Madras High Court, assembled near the main gate of the then Hon'ble Chief Justice's residence and demanded for opening the gate, stating that they had come to meet the then Hon'ble Chief Justice. The complainant, who was in charge of the guards at the residence of the then Hon'ble Chief Justice, informed that the then Hon'ble Chief Justice was out of station. However, the Advocates demanded opening of the gate and shouted that if the gate was not opened, they would enter into the premises by scaling over the compound wall. The complainant had informed the matter to the jurisdictional police station namely, E5 Foreshore Estate Police Station over phone and by the time,

fifteen (15) Advocates had pushed open the gate, entered the premises and proceeded to the guard's room. The entire police personnel gathered and restrained the remaining crowd from entering into the premises. Their demand was that a case has been foisted against one Advocate namely Ganapathy Ramasubramaniam and his wife Radha by the Chennai CCB Police Personnel and despite withdrawal of the complaint lodged by the complainant, the police had searched the premises of the said couple and harassed them. Since it was a holiday, they had come to meet the then Hon'ble Chief Justice to his residence to redress their grievance.

(ii) Based on the complaint, a case was registered in E5 Foreshore Estate Police Station in Crime No.1077 of 2015 under Sections 143, 188, 353, 448, 506(i) IPC on 04.04.2015 at 22.30 hours. Subsequently, the case was transferred from E5 Foreshore Estate Police Station to CBCID based on the orders of the High Court. The investigation was conducted and a charge sheet came to be filed against 75 accused.

2. The petitioner herein has been arrayed as the 17th accused, who is said to have committed the offences under Sections 147, 506(i), 153, 152, 353 and 451 IPC r/w Sections 109 and 149 IPC. The present Criminal Original Petition has been filed to quash the charge sheet, which was taken on file in C.C.No.6756 of 2018 by the Special Court for trial in CCB and CBCID cases, Egmore, Chennai.

3. Heard Mr.N.G.R.Prasath and Mr.S.Prabhakaran, learned counsels for the petitioner and Mr.C.Iyyapparaj, learned Additional Public Prosecutor for the respondent.

4. Mr.N.G.R.Prasath, learned counsel for petitioner submitted that the offences for which the petitioner has been implicated cannot be sustained, since the ingredients for constituting the offences have not been clearly made out. He further submitted that the allegations in the FIR and the charge sheet are vague.

5. Mr.S.Prabhakaran, learned Senior Counsel for petitioner drew the attention of this Court to the antecedents of the occurrence and the purpose for which the Advocates had assembled before the then Hon'ble Chief Justice's residence. He also projected the case to the effect that the ingredients of the offences, for which the petitioner has been charged, have not been made out.

6. Mr.Iyyapparaj, learned Additional Public Prosecutor drew the attention of this Court to the statement of the witnesses and submitted that all the ingredients required to constitute the offences, for which the petitioner has been charged, have been clearly made out and in case the petitioner

is of the view that such evidences are contradicting each other, it is always open to him to substantiate the same during the course of the trial and that this Court should not exercise its powers under Section 482 Cr.P.C., at this stage.

7. I have given careful consideration to the submissions made by the respective counsel.

8. Before addressing the grounds raised by the petitioner for the purpose of quashing the charge sheet, by invoking powers under Section 482 Cr.P.C., it would be appropriate to refer to the limited inherent powers of this Court to entertain a quash petition. The Hon'ble Apex Court in various decisions have consistently held that the powers possessed by the High Court under Section 482 Cr.P.C., are very wide and the very plenitude of the power requires caution in its exercise. As such, the Court that exercises its powers under Section 482 Cr.P.C., must be careful to see that its decision, in exercise of this power, is based on sound principles.

9. In the case of Inder Mohan Goswami and another vs. State of Uttaranchal and others reported in (2007) 12 SCC 1, the Hon'ble Apex Court while dealing with on this aspect had observed as follows:

'The inherent power should not be exercised to stifle a legitimate prosecution. The High Court should normally refrain from giving a prima facie decision in a case where all the facts are incomplete and hazy, more so, when the evidence has not been collected and produced before the Court and the issues involved, whether factual or legal, are of such magnitude that they cannot be seen in their true perspective without sufficient material.'

10. With the above legal principle in the background, the arguments of the learned counsel were considered and the statements of the witnesses were perused.

11. The sum and substance of the submissions are that the ingredients of the offences for which the petitioner has been charged, had not been made out. The incident that had occurred on 04.04.2015, has been termed to be an 'unlawful assembly' as defined under Section 141 IPC. The fact that there were about 100 Advocates assembled in front of the then Hon'ble Chief Justice's residence has not been denied by the petitioner. The common object for such an assembly was to meet the then Hon'ble Chief Justice and for such purpose, it is stated by the most of the witnesses that there was show of

criminal force, to gain entrance to the premises of the then Hon'ble Chief Justice. From the statement of witnesses, it is seen that though the guards had informed the assembly of persons that the then Hon'ble Chief Justice was not in the residence, a portion of the Advocates, had overawed the guards and gained entrance inside the premises.

12. The submission of the learned counsel for petitioner was that, the Advocates had assembled in the scene of occurrence with an intention to redress their grievances, which cannot be termed as 'unlawful assembly'. Even assuming such statement to be true, the investigation reveals that such an assembly of persons by means of criminal force had gained entrance into the residence of the then Hon'ble Chief Justice, inspite of resistance from the guards. As such, if the submission of the counsel in this regard is accepted, it could be said that the assembly which was not unlawful had subsequently become an 'unlawful assembly'. As such, the incident would attract the ingredients of the definition of an unlawful assembly, as defined under Section 141 IPC.

13. When these members of the unlawful assembly had used force for the purpose of forcefully entering into the residence with a common object, it could be termed as 'Rioting' as defined under Section 146 IPC. Thereby, the offence under Section 147 IPC, will also be made out, as against every member of the unlawful assembly. The guards on duty in the residence of the then Hon'ble Chief Justice were public servants, who had tried to resist and disperse the crowd from the members gathered from entering into residence and inspite of such resistance, some of the Advocates had forcefully gained entering inside the residence and as such, the offences under Section 153, 353, 440 and 451 IPC could also be made out. All these aspects are reflected in the statements of the witnesses.

14. In view of the aforesaid offences being made out and even assuming that the petitioner herein was not implicated with specific overt acts, he would still be liable for the offence under Section 149 IPC, since he happened to be a member of the assembly, whose object is seen to be common. When all these offences are seen to have been made out from the statement of the witnesses, I am unable to comprehend as to how the submissions of the learned counsel for the petitioner that the offences have not been made out can be sustained.

15. I am consciously refraining from referring to the specific statement made by the witnesses, since it may have a bearing on the proceedings during the course of trial and thereafter. It would further be necessary to observe here that the observations made in this order with regard to

constitution of the offences have been made, only for the limited purpose of answering the grounds raised by the petitioner and that the trial Court shall not quote them as precedents or otherwise rely on the same, during the course of trial or its final conclusion.

16. In the light of the observations, I do not find any merits in entertaining the present petition by invoking the inherent powers of this Court under Section 482 Cr.P.C. Accordingly, Criminal Original Petition stands dismissed. Consequently, connected Miscellaneous Petition is dismissed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

sm/DP

To

- 1.The Deputy Superintendent of Police,
Crime Branch - CID Metro I Unit,
Egmore, Chennai - 600 008.
- 2.The Special Judge,
Special Court for Trial in CCB & CBCID,
Egmore.

+5cc to Mr.D.Nitin, Advocate SR.104949

Cr1.O.P.No.32118 of 2019

BR(CO)
CB(29/01/2020)

सत्यमेव जयते

WEB COPY