



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.03.2020

CORAM:

THE HON'BLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No. 3023 of 2020
and CRL.M.P.Nos. 1809 & 1810 of 2020

1.G.Duruvasan
2.A.Ramesh
3.B.C.Prabhu
4.K.K.Bhranai
5.Vairamuthu
6.P.Elango
7.Saranraj
8.M.Sivakumar
9.S.Shathishkumar
10.V.Vincent
11.S.Muthu
12.S.Mahimaidas
13.Velan (a) Kabilan
14.M.Senthil Nathan

... Petitioners/Accused

Vs.

1.Mr.D.Rajkuma
The Inspector of Police L&O,
C-2, Elephant Gate Police Station,
Chennai-600 079.

2. The Inspector of Police L&O,
C-2, Elephant Gate Police Station,
Chennai-600 079.

... Respondents

(R2 is impleaded as per order in Crl.M.P.NO.2183 of 2020
in Crl.O.P.No.3023 of 2020, dated 20.02.2020.)

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, to call for the records pertaining to C.C.No.2495 of 2019 pending on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai and quash the same.

For Petitioners : Mr.R.Narendren

For Respondents : Mr.M.Mohamed Riyaz for R2
Additional Public Prosecutor



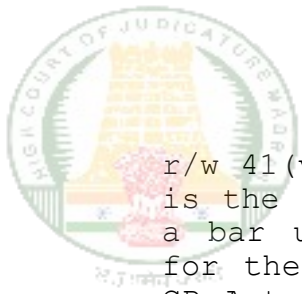
O R D E R

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.2495 of 2019 on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai, thereby having been taken cognizance for the offences under Sections 143 290, 341 IPC r/w 41(iv) of CP Act as against the petitioner.

2. The case of the prosecution is that on 26.08.2019, around 12.50 p.m., the members of the Indiya Kudia Arasu Katchi (IKK) to conduct agitation by blocking the road before the Ambedkar Statute near Elephant Gate Bridge under the head of North Chennai District Secretary one Durvasan formed unlawful assembly to protest for causing damage to Ambedkar Statute at Vedaranyam for arrest the persons alleged to have involved in the said Act, without getting prior permission from the concerned authority. On the basis of the above said allegation, the respondent police registered the complaint and filed a charge sheet against the petitioners for the offences under Sections 143, 290, 341 IPC r/w 41(vi) of CP Act, in C.C.No.2495 of 2019, on the file the learned VIII Metropolitan Magistrate, George Town, Chennai.

3. The learned counsel appearing for the petitioners submitted that the petitioners are the members of Indiya Kudia Arasu Katchi (IKK), they conducted the protest in peaceful manner. The respondent registered a false case and filed a charge sheet under Sections 143, 290, 341 IPC r/w 41(vi) of CP Act. The Section 143 is punishment for unlawful assembly. Section 41 of the Tamil Nadu City Police Act deals with the power to regulate assemblies, meetings a procession in public place. On the contrary Article 19(1)(b) of the Constitution of India Guarantee every citizen to right to assemble a peaceful manner without arms. 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. According to Section 195(1)(a) of Cr.P.C., no Court can take cognizance of an offence under Section 143 of IPC, unless the public servant has written order from the authority. Further he submitted that the petitioner or any other members had never involved in any unlawful assembly and there is no evidence that the petitioners restrained anybody. However, the respondent police had registered this case, under Section 143 290, 341 IPC r/w 41(vi) of CP Act, against the petitioners. Therefore, he sought for quashing the proceeding.

4. Per contra, the learned Additional Public Prosecutor submitted that the petitioners protest for causing damage to Ambedkar Statute at Vedaranyam and there are specific allegations as against the petitioners to proceed with the trial. Further, he would submit that Section 143 290, 341 IPC



r/w 41(vi) of CP Act, is a cognizable offence and therefore it is the duty of the police to register a case. Though there is a bar under Section 195(a)(i) of Cr.P.C. to take cognizance for the offence under Section 143 290, 341 IPC r/w 41(vi) of CP Act, it does not mean that the police cannot register FIR and investigate the case. 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.R.Narendren, learned counsel for the petitioners and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the respondent.

6. On perusal of the charge, it is seen that the petitioners protest for causing damage to Ambedkar Statute at Vedaranyam for arrest the persons alleged to have involved in the said Act, without getting prior permission from the concerned authority. Therefore the respondent police levelled the charges under Sections 143, 290, 341 IPC r/w 41(vi) of CP Act, against the petitioners. It is also seen from the charge itself that the charges are very simple in nature and trivial.

7. In the case on hand, the First Information Report has been registered by the respondent police for the offences under Sections 143 of IPC. They are not a competent persons to register FIR for the offences under Sections 143, 290, 341 IPC r/w 41(vi) of CP Act. As such, the First Information Report or final report is liable to be quashed for the offences under Section 143 290, 341 IPC r/w 41(vi) of CP Act. Further, the complaint does not even state as to how the protest formed by the petitioners is an unlawful protest and does not satisfy the requirements of Section 143 290, 341 IPC r/w 41(vi) of CP Act. Therefore, the final report cannot be sustained and it is liable to be quashed.

8. Accordingly, the proceedings in C.C.No.7547 of 2017 on the file of the learned VIII Metropolitan Magistrate, George Town, Chennai, is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

rri



To

1. The VIII Metropolitan Magistrate,
George Town, Chennai,

2. The Inspector of Police L&O,
C-2, Elephant Gate Police Station,
Chennai-600 079.

3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.R.Narendran, Advocate SR.18612

CRL.O.P.No. 3023 of 2020

and

CRL.M.P.Nos.1809 & 1810 of 2020

MR(CO)
CB(15/07/2020)