

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.09.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.13935 of 2020
and CrI.M.P.Nos.5355 & 5356 of 2020

Sabhi Ahamed @ Dr.A.Shafie Ahamed
S/o. Abdul Raseed

... Petitioner

Vs.

1. State represented by
The Inspector of Police,
Mayiladuthurai Police Station,
Nagapattinam.
(In Crime No.286/2020)

2. Arul

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in C.C.No.156 of 2020 on the file of the learned Judicial Magistrate No.1, Mayiladuthurai and quash the Final Report in same as against the petitioner.

For Petitioner : Mr.A.Rajamohamed

For Respondents

For R1 : Mr.S.Karthikeyan
Additional Public Prosecutor

ORDER

This petition has been filed to quash the proceeding in C.C.No.156 of 2020 on the file of the Judicial Magistrate No.1, Mayiladuthurai, thereby taken cognizance for the offences punishable under Sections 188, 269, 217, 271 of IPC, Section 14 (b)(c) of Foreigners Act, 1946 and Section 51(1)(b) of National Disaster Management Act, 2005 as against the petitioner.

2. The learned counsel appearing for the petitioner would submit that there are totally 13 accused in which, the petitioner is arrayed as A1. The case of the prosecution is that the petitioner, who is a member of Tabligh Jamatt had invited the accused 2 to 13 to Misba Mosque on 23.03.2020, though he had the knowledge of nationwide lock down due to Covid-19, and made them stay there. A2 to A13 were involved in preaching of religion during lock down. A2 to A13 are concerned, they are

foreign nationalist and they appeared before the learned Judicial Magistrate No.1, Mayiladuthurai, and admitted their guilty and therefore, A2 to A13 were convicted and imposed with fine.

2.1. He further submitted that insofar as the petitioner is concerned, even according to the complainant, the petitioner invited A2 to A13 and he never participated in the propaganda preach of his religion by other accused. In fact, A2 to A13 came to India on 23.03.2020 and on the same day the Government of India passed prohibition order under Section 144 of Cr.P.C. Therefore, A2 to A3 could not be able to move out. They have no other place to stay, therefore they directed to stay there. Therefore, the petitioner never involved any preach or religion and also never interrogated with A2 to A13.

2.2. He further submitted that no offence is made out as against the petitioner, since the offence under Section 188 of IPC is registered by the first respondent on the complaint lodged by the second respondent. The second respondent is not a competent person to lodge the complaint and the complaint shall not be lodged before the first respondent and it should be lodged before the concerned jurisdictional magistrate Court. Therefore the entire proceeding is vitiated. He further submitted that insofar as the offence under Section 269 of IPC is concerned as per the statement of the second respondent, the petitioner did not indulge any activity which may spread any disease. Therefore, the offence under Section 269 of IPC is not at all attracted as against the petitioner.

2.3. Insofar as the offence under Section 271 of IPC is concerned, no one has spoken about the petitioner's disobedience of quarantine rule as per the Government Order. Therefore the entire case has been foisted with malafide intention and only to satisfy others. He further submitted that he is being the professor and head of the department in Annamalai University, he is a responsible person and he never involved in the crime as alleged by the prosecution. Therefore, he sought for quashment of the entire proceedings.

3. Per contra the learned Additional Public Prosecutor submitted that there are totally 13 accused in which, the petitioner is arrayed as A1. A2 to A13 have come to India to preach their religion. On 23.03.2020, A2 to A13 reached Misba Mosque. On the instruction of the first accused, all are visited India in the tourist visa. From 23.03.2020, there is an order of prohibition under Section 144 of Cr.P.C. While being so, violating the said prohibition order, on 23.03.2020, A1 along with other accused persons had involved in the activity of preaching of their religion in the public, thereby they committed the offences punishable under Sections 188, 269, 217,

271 of IPC, Section 14(b)(c) of Foreigners Act, 1946 and Section 51(1)(b) of National Disaster Management Act, 2005. He further submitted that though the accused A2 to A13 returned to their respective countries, they were convicted for those offences and imposed fine on them. Therefore, all the points raised by the petitioner cannot be considered here that too under Section 482 of Cr.P.C., and prayed for dismissal of the quash petition.

4. Heard Mr.A.Rajamohamed, learned counsel appearing for the petitioner and Mr.S.Karthikeyan, learned Additional Public Prosecutor appearing for the first respondent.

5. The petitioner is arrayed as A1. All other accused persons viz., A2 to A13 are foreigners and they were returned to their respective countries. They were convicted by the trial Court and imposed fine as follows :-

"8. Hence, A2 to A13 convicted with fine of Rs.500/- for the offence under Section 269 of IPC in default simple imprisonment of one week, A2 to A13 convicted with fine of Rs.500/- for the offence under Section 271 of IPC in default simple imprisonment of one week, A2 to A13 convicted with 36 days simple imprisonment and also impose fine of Rs.1000/- of the offence under Section 51(b) of National Disaster Management Act 2005 in default simple imprisonment of one week and also A2 to A11 convicted with 36 days simple imprisonment and also impose fine of Rs.1000/- for the offence under Section 14 (b)(c) of Foreigners Act, 1946 in default simple imprisonment of one week. The period of imprisonment run concurrently. The period of detention already undergone by these accused is set off under Sec. 428 Cr.P.C."

6. Insofar as the petitioner is concerned, there are independent evidences to reveal that from 23.03.2020 onwards, even after came to the knowledge that there is prohibition order under Section 144 of Cr.P.C., the petitioner invited A2 to A13 to Misba Mosque on 23.03.2020, and made arrangement for stay. They also indulged in preach of their religion in public with wearing mask and also without maintaining social distance between them. Therefore, the second respondent lodged complaint on 06.04.2020 and informed about the participation of the accused person in the preach of religion. Therefore there are specific avernments as against the petitioner to attract of the offences as alleged by the prosecution.

7. It is relevant to rely upon the judgment of the Hon'ble Supreme Court of India passed in CrI.A.No.579 of 2019 dated 02.04.2019 in the case of Devendra Prasad Singh Vs. State of Bihar & Anr., as follows:-

"12. So far as the second ground is concerned, we are of the view that the High Court while hearing the application under Section 482 of the Cr.P.C. had no jurisdiction to appreciate the statement of the witnesses and record a finding that there were inconsistencies in their statements and, therefore, there was no prima facie case made out against respondent No.2. In our view, this could be done only in the trial while deciding the issues on the merits or/and by the Appellate Court while deciding the appeal arising out of the final order passed by the Trial Court but not in Section 482 Cr.P.C. proceedings.

13. In view of the foregoing discussion, we allow the appeal, set aside the impugned order and restore the aforementioned complaint case to its original file for being proceeded with on merits in accordance with law.

8. Recently, the Hon'ble Supreme Court of India dealing in respect of the very same issue in CrI.A.No.1572 of 2019 dated 17.10.2019 in the case of Central Bureau of Investigation Vs. Arvind Khanna, wherein, it has been held as follows:

"19. After perusing the impugned order and on hearing the submissions made by the learned senior counsels on both sides, we are of the view that the impugned order passed by the High Court is not sustainable. In a petition filed under Section 482 of Cr.P.C., the High Court has recorded findings on several disputed facts and allowed the petition. Defence of the accused is to be tested after appreciating the evidence during trial. The very fact that the High Court, in this case, went into the most minute details, on the allegations made by the appellant-C.B.I., and the defence put-forth by the respondent, led us to a conclusion that the

High Court has exceeded its power, while exercising its inherent jurisdiction under Section 482 Cr.P.C.

20. In our view, the assessment made by the High Court at this stage, when the matter has been taken cognizance by the Competent Court, is completely incorrect and uncalled for."

9. Further the Hon'ble Supreme Court of India also held in the order dated 02.12.2019 in CrI.A.No.1817 of 2019 in the case of M.Jayanthi Vs. K.R.Meenakshi & anr, as follows:

"9. It is too late in the day to seek reference to any authority for the proposition that while invoking the power under Section 482 Cr.P.C for quashing a complaint or a charge, the Court should not embark upon an enquiry into the validity of the evidence available. All that the Court should see is as to whether there are allegations in the complaint which form the basis for the ingredients that constitute certain offences complained of. The Court may also be entitled to see (i) whether the preconditions requisite for taking cognizance have been complied with or not; and (ii) whether the allegations contained in the complaint, even if accepted in entirety, would not constitute the offence alleged.

.....

13. A look at the complaint filed by the appellant would show that the appellant had incorporated the ingredients necessary for prosecuting the respondents for the offences alleged. The question whether the appellant will be able to prove the allegations in a manner known to law would arise only at a later stage....."

The above judgments are squarely applicable to this case and as such, the points raised by the petitioner cannot be considered by this Court under Section 482 Cr.P.C.

10. In view of the above discussion, this Court is not inclined to quash the proceedings in C.C.No.156 of 2020 on the file of the learned Judicial Magistrate No.1, Mayiladuthurai. The petitioner is at liberty to raise all the grounds before the trial Court. Considering the facts and circumstances of the case, the personal appearance of the petitioner is dispensed with and he shall be represented by a counsel after filing appropriate application. However, the petitioner shall be present before the Court at the time of furnishing of copies,

framing charges, questioning under Section 313 Cr.P.C. and at the time of passing judgment. The trial Court is directed to complete the trial within a period of six months from the date of receipt of copy of this Order.

11. Accordingly, this Criminal Original Petition is dismissed. Consequently, connected miscellaneous petitions are also closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rts
To

1. The Judicial Magistrate No.1,
Mayiladuthurai.
2. The Inspector of Police,
Mayiladuthurai Police Station,
Nagapattinam.
3. The Public Prosecutor
Madras High Court,
Chennai.

+2ccs to M/s.A.Raja Mohamed, Advocate, Sr.No. 29543

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Crl.M.P.Nos.5355 & 5356 of 2020

RSV(CO)
RMP(09/11/2020)

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