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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.11.2020**

CORAM:

THE HONOURABLE MRS.JUSTICE **J.NISHA BANU**

Crl.O.P. (MD)No.12673 of 2020

and

Crl.M.P. (MD)No.5782 of 2020

- 1.Annadurai
- 2.Vijayan
- 3.Ilangovan @ Elango
- 4.Thennavan
- 5.Karthik
- 6.Prabhu
- 7.Arumugam
- 8.Kumar
- 9.Arumugam
- 10.Chitra
- 11.Malliga
- 12.Suriya
- 13.Nondisami
- 14.Chinnaponnu
- 15.Mathalagi @ Ponnusami Wife
- 16.Alagu
- 17.Selvam
- 18.Pitchayammal
- 19.Pattaiya @ Venkatachalapathi
- 20.Thavamani
- 21.Raju
- 22.Chinnaponnu ... Petitioners /A-1, 5 to 12, 34 to 45 & 47

Vs.

- 1.The State Rep. by
The Inspector of Police
Appan Thirupathi Police Station,
Madurai District.
(Crime No.89 of 2017) .. 1st Respondent / Complainant
- 2.Murugesan .. 2nd Respondent / Defacto Complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the charge sheet in P.R.C.No.14 of 2017 on the file of Judicial Magistrate Court No.5, Madurai and quash the same as illegal in so far as the petitioners concerned.

For Petitioner : Mr.R.Gandhi

For 1st Respondent : Ms.S.E.Veronica Vincent

Government Advocate (Crl.side)

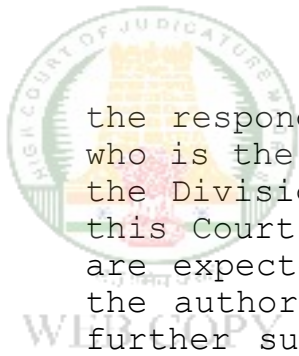


O R D E R

The Criminal Original Petition is filed to quash the charge sheet in P.R.C.No.14 of 2017 on the file of Judicial Magistrate Court No.5, Madurai as against the petitioners concerned.

2. The case of the prosecution is that one Murugesan/R2 has preferred a complaint before the first respondent police alleging that he is working as Supervisor in TASMAC shop situated in Nayakanpatti Village and on 18.04.2017 when he proceeded to open the TASMAC shop, the students, teachers of GMS MAVMM Polytechnic College have damaged the thatched shed and the fence put up around the TASMAC shop along with the general public and when he prevented the same, the petitioners along with others have threatened him, thereby, he has preferred a complaint and on receipt of the same the respondent police has registered a case in Crime No. 89 of 2017 for the offences under Sections 147, 148, 341, 353 of IPC and Section 4 of TNPPDL Act against the Baskaran and 27 others. On completion of investigation the first respondent police has filed charge sheet against the petitioners and 26 others and the same has been taken cognizance and pending committal in PRC No. 14 of 2017 by the learned Judicial Magistrate No.V, Madurai for the offences under Sections 147, 148, 341, 353 of IPC and Section 3 of TNPPDL Act.

3. The learned counsel appearing for the petitioners would submit that the petitioners are arrayed as accused Nos. 1, 5 to 12, 34 to 45 & 47. He would further submit that the first petitioner is the Ex-MLA CPI leader and other petitioners are belongs to Moonoor Village. He would further submit that the petitioners have not committed any offence as alleged by the defacto complainant. On 18.04.2017 the defacto complainant along with other TASMAC employees had hurriedly put up thatched shed and a fence to open a TASMAC shop nearby GMS MAVMM Polytechnic College. There are nearly 1025 students studying in the college and 120 students are staying in the college hostel and the college is situated near Alagar Kovil catering to the needs of the downtrodden students hailing from the area. He would further submit that the girl students and women faculty members who are hailing from the nearby villages used to reach the college by walk. Further, there is a De-Addiction centre very close by the college. When the matter stood thus, the TASMAC Manager has decided to shift the TASMAC shop to a location which was within the 100 meter from the college campus. Since the shifting of TASMAC shop nearby an educational institution and a De-Addiction centre was not welcomed by the villagers, various representations were given to the authorities by the college administration and by the village elders. The college Authorities and the villagers were firm on their demand and file their representation were not headed by the Authorities, they resorted to agitations by democratic means. A local political functionary who was to run the bar had influenced



the respondent to register the case. Infact, the third petitioner who is the Principal of the College has filed a Writ Petition before the Division Bench of this Court in W.P. (MD) No. 16180 of 2019 and this Court by order dated 19.09.2019 had found that the authorities are expected to act in public interest and this Court had directed the authorities not to shift the bar near the College. He would further submit that taking into consideration the entire averments there is no specific allegations against each of the petitioners and there is only a omnibus allegation that all of them joined together and caused damage to the TASMACH shop. He would further submit that the omni bus statement may not constitute the offences against each and every individual persons, since criminal trial is contemplated only on the basis of the definite allegations of commission of the offence by every individual persons. He would further submit that as per valuation report the value of the damaged articles are shown to be of no value and the damaged articles were shown to be one PVC pipe measuring 36 cm in length and 11 cm on the breadth and some wire shown to be damaged and the athatchi does not totally with the alleged value shown in the charge sheet. He would further submit that the proceedings pending on the file of the Court is nothing but abuse of process of law and thereby, he would seek to quash the proceedings pending in P.R.C.No.14 of 2017.

4. The learned counsel appearing for the petitioner would further submit that in the same Crime number in respect of few accused, this Court by order dated 14.12.2017 in Crl.O.P.(MD) No. 14296 of 2017 had quashed the proceedings and the relevant paragraph of the order are extracted hereunder:

"5. On a perusal of the complaint as well as the statement of the witnesses under Section 161(3) Cr.P.C. it is seen that none of the students have been implicated with overt acts for constituting the offences for which they are charged for.

6. It is generally averred that they had joined together and threatened the staff by throwing stones and damaging the college properties. The omnibus statement may not constitute the offences against each and every individual student, since criminal trial is contemplated only on the basis of definite allegations of commission of the offence by every individual student.

7. The learned counsel for the petitioners relied upon the judgment of the Hon'ble Supreme Court in Sathish Mehra V. State of N.C.T. Of Delhi and Anr, AIR 2013 SC 506 and relevant paragraph of the said order read as follows:

9. The view expressed by this Court in Century Spinning's case (supra) and in 1. Muniswamy's case (supra) to the effect that the framing of a charge sheet against an accused substantially affects the



person's liberty would require a reiteration at this stage. The apparent and close proximity between the framing of a charge in a criminal proceeding and the paramount rights of a person arrayed as an accused under article 21 of the Constitution can be ignored only with peril. Any examination of the validity of a Criminal charge framed against an accused cannot overlook the fundamental requirement laid down in the decisions rendered in Century Spinning and Munisawamy (supra). It is from the aforesaid perspective that we must proceed in the matter bearing in mind the cardinal principles of law that have developed over the years as fundamental to any examination of the issue as to whether the charges framed are justified or not. So analysed, we find that in the present case neither in the FIR nor in the charge-sheet or in any of the materials collected in the course of investigation any positive role of either of the appellants i.e., G.K.Bhat and R.K. Arora has been disclosed in the matter of renewal and encashment of the fixed deposits. All that appears against the aforesaid two accused is that one was the Chief Manager of the Bank whereas the other accused was at the relevant time working as the Senior Manager. What role, if any, either of the accused had in renewing the two fixed deposits in the sole name of Anita Mehra or the role that any of them may have had in the payment of the amount due against FD No. 21/91 to Anita Mehra or in cancelling the FD NO. 9/92 renewed in the sole name of Anita Mehra and thereafter making a fresh FD in the joint Anita Mehra and Satish Mehra, is not disclosed either in the FIR filed or materials collected during the course of investigation or in the charge-sheet filed before the Court. There can be no manner of the course of investigation or in the charge-sheet filed before the Court. There can be no manner of doubt that some particular individual connected with the Bank must have authorised the aforesaid acts. However, the identity of the said person does not appear from the materials on record. It is certainly not the prosecution case that either of the accused-appellants had authorised or even facilitated any of the aforesaid action. In such a situation to hold either of the accused-appellants to be, even prima facie, liable for any of the alleged wrongly acts would be a matter of conjecture as no such conclusion can be reasonably and justifiably drawn from the materials available on record. A criminal trial



cannot be allowed to assume the character of fishing and roving enquiry. It would not be permissible in law to permit a prosecution to linger, limp and continue on the basis of a mere hope and expectation that in the trial some material may be found to implicate the accused. Such a course of action is not contemplated in the system of criminal jurisprudence that has been evolved by the courts over the years. A criminal trial, on the contrary, is contemplated only on definite allegations, prima facie, establishing the commission of an offence by the accused which fact has to be proved by leading unimpeachable and acceptable evidence in the course of the trial against the accused. We are, therefore, of the view that the criminal proceeding in the present form and on the allegations levelled is clearly not maintainable against either of the accused-appellant G.K. Bhat and R.K. Arora".

5. He would further submit that a Division Bench of this Court in Crl.O.P.(MD).No.9185 of 2017, dated 05.05.2017, on the same set of facts had quashed the proceedings against the persons involved in similar acts even at the FIR stage itself while disposing the bail application. He would further submit that the petitioners who are the teachers and students demonstrated for a reasonable and genuine cause in the interest of public and they have been unnecessarily made to face criminal proceedings. He also relied upon the Judgement passed by the Division Bench of this Court, dated 05.05.2017 in Crl.O.P.(MD) No. 9185 of 2017.

"The petitioners have filed this Criminal Original Petition seeking bail for the offences punishable under Sections 147, 341, 448, 436 of Indian Penal Code r/w Section 3(1) of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act 1992, by the 2nd respondent on 29.04.2017 in Crime No.1086 of 2017, when they staged demonstration before the TASMACH Shop No.9025 at Sivashakthi Nagar, Thirumullaivoyal. They were arrested on 29.04.2017 and were remanded to Judicial custody by the learned Judicial Magistrate, Ambattu. Out of the petitioners, one Mr.Prasanna, has already got parole from this Court.

2. Heard Mr. M.Shanmugasundaram, learned Senior Counsel appearing for the petitioners and Mr.P.Rajarathinam, learned Public Prosecutor assisted by Mr.V.M.R.Rajentren, learned Additional Public Prosecutor for the State.



3. Though Mr.P.Rajarathinam, learned Public Prosecutor would submit that public property was damaged, a perusal of FIR would reveal that only flex board carrying the name of the TASMAL Shop was brought down and set on fire, which is hardly worth Rs.1,000/-.

4. The people are agitating against the opening of TASMAL Shop in the midst of the residential area. The photographs produced before this Court would show that hurriedly they opened up the TASMAL Shop, converting a car parking area into a Shop in the midst of the residential area. Moreover, a temple is located nearby the shop. It is also to be noted that no number is given and the door itself placed in the wall of the Shop.

5. In view of the nuisance being created by the drunkards, residents of the area are very much worried and they staged demonstration. No doubt, demonstration should be staged without any violence. The only violence act, which is alleged to have been committed by the petitioners is bringing down the flex board and set on fire. It is very difficult to assess the mood of the masses. This kind of things cannot be avoided when an agitation is staged. However, the observation does not mean that this Court is encouraging violence. Any form of violence should be discouraged and deprecated.

6. Taking note of the agitation is only with regard to the opening of the TASMAL Shop hurriedly in a residential area, people are justified in staging the demonstration. In the process, the flex Board was brought down and set on fire and therefore, this Court directs a sum of Rs.1,000/- to be paid to the Legal Services Authority, Chennai, within a period of one week from today.

7. Taking into account the aforesaid circumstances of the case, this Court is of the view that the FIR itself is to be quashed and accordingly, the same is quashed. The prison authorities are directed to release the petitioners before 06.00 p.m. today".

6. The learned Government Advocate appearing for the respondent police would submit that there are specific allegations levelled against the accused persons based on statement recorded from the witnesses. He would further submit that the proceedings cannot be quashed at the threshold.



7. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Criminal side) appearing for the first respondent Police.

8. This Court perused the materials available on record.

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9. The petitioners are respectively the Ex-MLA CPI Leader and the General Public belongs to Moonoor Village. They have demonstrated and agitated against the shifting of TASMACH near the college along with the President, Correspondent, Principal, Lecturers, Staff and students of GMS MAVMM Ploytechnic College. Further, it is also stated that nearly 1025 students including boys and girls are studying in the college and they have to pass by the area and there is also a de-addiction centre nearby. An omnibus allegation is made that they caused damage to the thatched shed and the fence put up in and around the TASMACH shop they threatened the staff of the TASMACH shop.

10. Perusal of the records shows that except omnibus allegation made against all of the accused, no specific averment made against any of the petitioners in particular. Omnibus statement may not constitute the offence against each and every individual person, since the criminal trial is contemplated on the basis of the definite allegations of the commission of the offence by every individual person. The criminal trial is contemplated only on definite allegation, *prima facie*, establishing commission of offence by each accused which has to be proved by leading acceptable evidence in the course of trial. In this case, specific evidence is lacking. Further, the details of the valuation of the loss stated to have been committed is also not clear.

11. Apart from the above, taking into consideration the facts of the case that the petitioners have agitated for a public cause, this Court is of the opinion that allowing the further proceedings against the petitioners to be continued is nothing but abuse of process of law and thereby, the charge sheet in P.R.C.No. 14 of 2017 on the file of the learned Judicial Magistrate No.V, Madurai is liable to be quashed.

12. With the above observations, the Criminal Original Petition stands allowed and the charge sheet in P.R.C. No. 14 of 2017 on the file of the learned Judicial Magistrate No.V, Madurai is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (co)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate / litigant concerned.

To

1.The Judicial Magistrate No.V
Madurai.

2.The Inspector of Police
Appan Thirupathi Police Station,
Madurai District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to Mr.R.GANDHI, Advocate (SR-21544[F] dated 09/11/2020)

CrI.O.P.[MD]No.12673 of 2020
09.11.2020

VB (27.11.2020) 8P 5C