



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.07.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.357 of 2021
and
Crl.MP.Nos.174 & 175 of 2021

S.Prince Ennarasu Periyar

... Petitioner/A-7

Versus

1.The State rep.by
The Inspector of Police,
Sembium Police Station,
Chennai.
(Crime No.1277 of 2019)

..1st respondent/Complainant

2.Jaganathan
The Inspector of Police,
Sembium Police Station,
Chennai.

...2nd respondent/Defacto Complainant

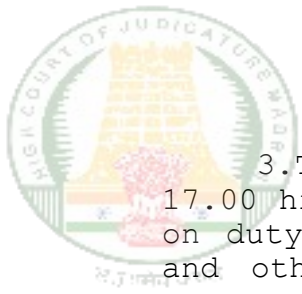
PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the Charge sheet in C.C.No.8299 of 2017, on the file of the learned V Metropolitan Magistrate, Chennai in Crime No.1277 of 2017, on the file of the 1st respondent and quash the same so far as the petitioner is concern.

For Petitioner : Mr.S.Kumara Devan
For R 1 : Mr.A.Damodaran,
Government Advocate (Crl. Side)

ORDER

The petitioner/A7, who is facing trial before the learned V Metropolitan Magistrate, Egmore, Chennai in C.C.NO.8299 of 2017, for offence under Sections 143, 353, 188 & 75 CP Act r/w 7(1)(a) CLA Act @ 143, 145, 147 & 353 IPC, has filed the above Quash Petition.

2.On information, the 2nd respondent/defacto complainant the Inspector of Police, Sembium Police Station, Chennai registered a case in Crime No.1277 of 2017 on 09.09.2017 against the petitioner. On completion of investigation, charge sheet filed against them, listing five witnesses as LW1 to LW5 and documents.



WEB GATES

3.The gist of the case is that on 09.09.2017, at about 17.00 hrs, the 2nd respondent/LW1 along with the Police party was on duty, at that time, near Murasolimaran Park, the petitioner and others without any prior permission from the authorities concerned had unlawfully assembled and obstructed the free movement of traffic and general public, raised slogans and conducted a dharna. When the 2nd respondent intervened and insisted them to disburse, the petitioner/protesters failed to do so. Hence, a complaint was lodged and on completion of investigation charge sheet came to be filed before the learned V Metropolitan Magistrate, Egmore, Chennai and the same was taken on file as C.C.No.8299 of 2017.

4.The contention of the petitioner is that in this case, LW1 to LW5 are all police personnels and no private person examined and cited as witness in this case. The case of the prosecution is that the petitioners are said to have indulged in a protest against the NEET examination. It is highly improbable that no public witness was present in the place of occurrence and no reason given for non examination of public witnesses. In this case, the FIR in Crime No.1277 of 2017 was registered for offence under Section 188 IPC. As per Section 188 IPC, only the public servant is authorized to lodge a complaint and Section 195 Cr.P.C is clear embargo as to how a complaint to be registered and investigated by the Police for offence under Section 188 IPC. In this case, there is no complaint from the public servant. Hence, the registration of the FIR its void ab initio and continuing the investigation for other offences is also not permitted

5.The learned counsel for the petitioner submitted that this Court in catena of judgments have clearly held that the police personnel are not empowered to register an FIR under Section 188 IPC. There is nothing to show that on the date of occurrence, there was any prohibitory order in force and whether that order was communicated in the prescribed manner is also not known. The learned counsel further submitted that this Court in the cases of "Madhan Mohan Versus The State and another in Cr1.O.P.Nos.23129 & 23127 of 2019" on the similar grounds, quashed the proceedings against the accused. Further, in the case of "Jeevanandham and others Vs. State Rep. by Inspector of Police and another reported in (2018) 2 LW Cr1. 606", had given an authoritative pronouncement regarding the cases to be registered and investigated under Section 188 IPC and also issued certain guidelines, which is violated in this case

6.The learned counsel for the petitioner further submitted that the petitioner raised slogans and held demonstration against the Government regarding NEET exam, which cannot be construed as unlawful act. Right to Dissent is the Hallmark of



Democracy, the petitioner only expressed his displeasure which is his fundamental right. Hence, he prayed for quashing of the proceedings against the petitioner.

7.The learned Government Advocate (Crl.side) appearing for the respondents submitted that in this case, a complaint was lodged by the 2nd respondent/the Inspector of Police, Sembium Police Station, Chennai/LW1. When he was on patrol duty along with LW2 to LW4 near Murasolimaran Park, found the petitioner had assembled and raised slogans against the Government and also caused disturbance to the public. Timely intervention of the respondents, further law and problem were averted. The petitioners without getting permission from the authorities concerned have formed themselves into an unlawful assembly restrained the others and caused public disturbance. On completion of investigation, charge sheet has been filed in this case.

8.Considering the rival submissions and on perusal of the materials this Court finds that the petitioners have only raised their objection with regard to general public. Raising slogans against the Government itself would not amount to any commission of offence, which is a fundamental right under Constitution of India.

9.From the statement of the witnesses, it is seen that LW1 to LW5 present in the scene of occurrence and according to them, the petitioner raised slogans against the Government and he was indulged in a protest against the NEET examination. Admittedly in this case, the occurrence taken place in a public place and in public view, no public or independent witness examined by the prosecution, which creates serious doubt on the veracity of the complaint. Further, this Court in the case of "Jeevanandham and others Vs. State Rep. by Inspector of Police and another reported in (2018) 2 LW Crl. 606" had clearly held that the police officials are not empowered to register a case under Section 188 IPC and th same is barred under Section 195 Cr.P.C. There is no material to show that there was any promulgation of any prohibitory order which was communicated to the public and there was any disobedience by the petitioners. Further, in consequence to the protest, the prosecution failed to show whether any trouble injuries occurred. Thus, the respondent Police did not follow the guidelines issued by this Court in Jeevanandham (Cited Supra). In several cases, this Court quashes the proceedings against the accused/protesters on the similar ground.

10.In the result, the proceedings in C.C.No.8299 of 2017, on the file of the V Metropolitan Magistrate Court, Egmore, Chennai is hereby quashed against the petitioner/A7 as also against all



other accused who are similarly placed. This Criminal Original Petition is allowed accordingly. Consequently, connected Criminal Miscellaneous Petitions are closed.

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Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
Sembium Police Station,
Chennai.
2. The V Metropolitan Magistrate,
Chief Metropolitan Magistrate Court,
Chennai.
- 3.The Public Prosecutor,
High Court, Madras.

+1cc to M/s.Kumara Devan, Advocate SR.No. 32335

CRL.O.P.No.357 of 2021

GPL(CO)
B.VC(13.08.2021)