



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 22.06.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CRL. O.P. NO.3440 OF 2018

AND

CRL. M.P. NOS. 1510 & 1511 OF 2018

1. Vignesh
2. Anand Raj
3. Lalith Kumar
4. Raj Kumar
5. Vasanth
6. Narendran
7. Satish Kumar
8. Magesh

.. Petitioners

- Vs -

State, rep. By
Inspector of Police
K-6, T.P. Chathiram Police Station
Chennai 600 010.

.. Respondent

Petition filed u/s 482 Cr.P.C. Seeking to call for the records in c.C. No.8282 of 2017 on the file of the learned V Metropolitan Magistrate, Chennai, and to quash the same.

For Petitioners: Dr. G.Krishnamurthy

For Respondent : Mr. A.Gopinath, GA (Crl. Side)

ORDER

This petition has been filed by the petitioners for quashment of C.C. No.8282 of 2017 on the file of the learned V Metropolitan Magistrate.

2. The crux of the allegation as is reflected in the charge sheet is that the petitioners, without obtaining prior permission had installed a 6 feet Vinayagar Idol on 25.8.2017 on a platform in the 2nd Street at the junction of R.V. Nagar Main Road for the purpose of worshipping and, thereafter removed the same and immersed the said idol in the sea on 31.8.2017, which



has led to the registration of Crime No.897 of 2017 for the offence u/s 143 and 188 IPC, which has been taken cognizance of by the learned Magistrate in C.C. No.8282/2017.

3. Learned counsel appearing for the petitioners submit that the respondent has charged the petitioners u/s 188 IPC and to invoke the said provision, filing of a private complaint as is contemplated u/s 195 Cr.P.C., is mandatory and in the absence of such a private complaint being filed, no court could take cognizance of the offence u/s 188 Cr.P.C. and, therefore, the offence u/s 188 IPC definitely has to be set aside.

4. It is the further submission of the learned counsel for the petitioners that even in respect of the offence u/s 143 IPC, the very section reveals that the an offence can be charged only when a case is made out that there was an unlawful assembly in which the petitioners participated. However, the respondent has pathetically failed to prove any unlawful assembly of which the petitioners were part of and, therefore, the said offence also cannot be maintained. Accordingly, he seeks for quashment of the case.

5. Per contra, learned Government Advocate (Crl. Side) appearing for the respondent submits that though the offence u/s 188 IPC cannot stand alone in view of the non-filing of the private complaint as envisaged u/s 195 Cr.P.C., yet in view of the offence committed u/s 143 IPC, where the idol was installed without permission and worship was carried out in the form of a gathering, there definitely was an unlawful assembly, which necessitates the respondent to enforce law and order by invoking their powers and registering the case. It is further submitted by the learned Government Advocate that the court below has taken into consideration all the factors, while taking cognizance of the case and, therefore, the petitioners necessarily have to face trial and cannot try to wriggle out of the situation pointing out technicalities.

6. This Court gave its anxious consideration to the submissions advanced by the learned counsel on either side and also perused the materials available on record.

7. Even at the very outset, it is to be pointed out that to invoke the provisions of Section 188 IPC against the petitioners, the mandatory condition as stipulated u/s 195 Cr.P.C. has to be adhered to. A perusal of the FIR reveals that based on information, the law enforcing agency has gone to the designated place on 25.8.17 and found an installed statute of Lord Vinayaga, for the purpose of worship. However, no material whatsoever has been placed before this Court to show as to whether a complaint was given by any individual/public before



the law enforcing agency, which has been placed before the Court, so as to enable the Court to take cognizance of the case. In the absence of adhering to the procedure as mandated u/s Section 195 Cr.P.C., slapping the offence u/s 188 IPC on the petitioners is wholly unsustainable and impermissible.

8. Insofar as the offence u/s 143 IPC is concerned, the said provision proceeds on the footing that whoever is a member of an unlawful assembly shall be punished with imprisonment of either description for a term which may extend to six months or with fine or with both. Therefore, to attract the offence u/s 143 IPC, the necessary ingredient is that the persons against whom the offence is slapped should be members of an unlawful assembly.

9. In this regard, a perusal of the FIR reveals that receipt of information on 25.08.2017 resulted in the respondent visiting the junction of 2nd Street in R.V. Nagar Main Road, where they found a statute of Lord Vinayaga installed for the purpose of worship. The FIR further proceeds that thereafter, on 31.08.2017, the said statute of Lord Vinayaga was immersed in the sea. This also seems to be only through information and there is nothing in black and white. Only thereafter, on 01.09.2017 the FIR has come to be registered. Therefore, it is evident from the FIR that neither on 25.08.2017 nor on 31.08.2017, the respondent had been in the vicinity of an unlawful assembly, in which the petitioners had participated, so as to invoke the provisions of Section 143 IPC against the petitioners. Curiously, when the respondent came to know about the installation of the statute on 25.08.2017, except for visiting the spot and verifying the same, no steps was taken by the respondent and, thereafter, the respondent kept silent till 31.08.2017, when the statute was immersed in the sea and only thereafter, on 01.09.2017 the said FIR has emanated. The respondent has woken from deep slumber after a week and had registered the FIR, for reasons best known to them. A careful perusal of the belated FIR also reveals that even the very ingredients of the offence u/s 143 IPC is not made out as the averment in the FIR as to the public gathering and worshipping is only an inference on the part of the respondent and the same has not been established by means of any credible materials. Therefore, the said offence u/s 143 IPC is also not made out.

10. For the reasons aforesaid, the registration of FIR and taking cognizance of the offence u/s 143 and 188 IPC are wholly unsustainable and does not stand the test of legal scrutiny and in the above backdrop, this Court has to necessarily quash C.C. No.8282 of 2017 pending on the file of the learned V Metropolitan Magistrate, Chennai.



11. Accordingly, this criminal original petition is allowed by quashing C.C. No. 8282 of 2017 pending on the file of the learned V Metropolitan Magistrate, Chennai. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

PRI/GLN

To

1. The V Metropolitan Magistrate
Chennai.
2. Inspector of Police
K-6, T.P. Chathiram Police Station
Chennai 600 010.
3. The Public Prosecutor
High Court, Madras.

+1cc to Mr.G.Krishnamurthy, Advocate, S.R.No.29226

CRL. O.P. NO.3440 OF 2018

PL(CO)
CB(22/07/2021)