



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.06.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.5959 of 2021

and

Crl.M.P.Nos.3854 & 3855 of 2021

M.Vinayagar

...Petitioner / A1

Versus

1. State rep.by,

The Sub Inspector of Police,
Kallakurichi Police Station.

...Respondent /Complainant

2. Mr.Ramesh

...Respondent / Defacto
Complainant

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, may be pleased to call for the records pertaining to the Charge sheet in Crime No.126 of 2018, pending on the file of the Judicial Magistrate No.I, Kallakuichi and quash the same.

For Petitioner : Mr.A.Suresh Sakthi Murugan

For Respondents: Mr.A.Damodaran,
Government Advocate (Crl. Side)

O R D E R

The petitioner/A1 in C.C.No.126 of 2018, who is facing trial for the offence under Sections 294(b), 124A, 353 and 505(1)(b) of IPC., has filed this quash petition.

2.The gist of the case is that on 07.07.2018, at about 10.00 a.m., near the four road junction at Kallakurichi, the petitioner along with other accused had assembled and distributing provocative hand bills to the public against the State and Central Government. When the defacto complainant/ police constable had called them and warned not to indulge in such activities, and causing disturbance of peace and harmony, the petitioner along with others had abused and threatened the defacto complainant. Hence, the complaint was registered.

3.After completion of investigation and recording the statement of listed witnesses LW.1 to LW.7, charge sheet filed



against the petitioner and one Ganesh Babu. They are arrayed as A1 and A2.

4. The contention of the petitioner is that from the uncontroverted allegation made in the charge sheet then to there is no ingredients for any offences against the petitioner. The defacto complainant is a police constable and all the materials were collected by the Police Personnels, it is a false case lodged against them. Further, for the offence under Section 124 (A) sanction under Section 196 of Cr.P.C., is necessary, without sanction the charge sheet ought to have been rejected by the Lower Court. On the other hand the court below had taken cognizance and issued summons which is not proper.

5. From the plain reading of the complaint and the hand bill, it would only shows that 13 civilians were brutally killed when they participated in the Anti-Sterlite protest in the year 2018, the death of innocence protesters, were condemned. The petitioner and other accused are only raising their voice in the protest and nothing more, showing of protest cannot be termed as a sedition. In support of the contention, he also relied upon the decisions rendered by the Hon'ble Apex Court are as follows:

(i) In Kedarnath Singh Vs. State of Bihar reported in 1962 AIR 955 : 1962 Supp (2) S.C.R 769) and,

ii) Balwant Singh Vs. State of Punjab reported in (1995 (3) SCC 214 : 1995 (1) SCR 411).

Thus, mere protest would not amount to sedition. By assailing these points, the petitioner has filed this quash petition.

6. Learned Government Advocate (Crl.side) appearing for both the respondents submitted that on the basis of the complaint made by the defacto complainant/one Ramesh, a case in Crime No.480 of 2018 came to be registered. The said Ramesh was examined and his statement was recorded as LW.1. The defacto complainant would clearly state that when he was on patrol duty near the four road junction at Kallkurichi, the petitioner along with other accused was issuing provocative hand bills. On seeing this, the defacto complainant called them and warned them not to distribute the hand bills, but the petitioner and the other accused, used abusive language, threatened and also obstructed the public servant from discharging his official duty. Hence, the case came to be registered.

7. LW.2 was informed by LW.1 about the incident, who had reached the scene of occurrence. LW.3/driver is an eye witness, who was standing near the four road junction at the time. The witness saw A1 and A2 distributing the hand bills and picking up a quarrel with LW.1/defacto complainant. LW.4 is another driver, who corroborates LW.3. LW.5 is the Sub-Inspector of Police, who



prepared the Seizure Mahazar and Rough Sketch, on 07.07.2018 at about 10.00 a.m., LW.10 is the Investigation Officer in this case. The prosecution seized the hand bills from the scene of occurrence. The prosecution, during investigation collected all the materials and recorded the statement of witnesses and filed the final report before the Lower Court. The Lower Court considering all the materials filed along with the charge sheet, satisfied that a prima facie case is made out had taken cognizance of the offence, issued summons to the petitioner and other accused. The points raised by the petitioner in this petition are all factual in nature and which are to be raised only during trial and therefore, he prayed for dismissal of the quash petition.

8.Considering the rival submissions and perused the materials. It is seen that all the materials were produced by the police witnesses and the occurrence taken place on 07.07.2018 at about 10.00 a.m., The complaint was lodged at 10.30 a.m., The Investigation Officer registered the complaint and thereafter, on the same day recorded the statement of all the witnesses, visited the scene of occurrence and collected all the materials. It is seen that on the same day the entire investigation was completed and the charge sheet has been filed before the Lower Court on 30.07.2018. As per the charge sheet the offence committed is under Section 505 (1)(b) of IPC., As per Section 196 of Cr.P.C., no Court shall take cognizance of any offence punishable under Section 505(1)(b) of IPC., without previous sanction of Central or State or of the District Magistrate, but in this case, no such sanction had been obtained. On this score alone, this case to be quashed.

9.Further, on perusal of the materials, the offence is said to have taken place on 07.07.2018 at 10.00 a.m., the complaint lodged at 10.30 a.m., Observation Mahazar of LW.5 and Rough Sketch were prepared at 10.00 a.m., The witness who attested the Seizure Mahazar was examined on the same day at the same time. Furthermore, from the Seizure Mahazar, the hand bill is said to have been seized in the presence of LW.5 and LW.6 on 07.07.2018 at 11.55 hours, which creates a doubt in the manner, in which, the witnesses were examined and Mahazar prepared. Further, none of the witnesses have stated that on going through the hand bills it was found provocative, causing any disturbance or hatred among the public.

10.On going through the contents of hand bill, it is found that in the hand bill mentions 13 civilians shot dead. Showing protest is a hallmark of democracy and it is a fundamental right. Likewise, the petitioners were only raising solidarity with the deceased and raising concerned about the high handedness in the action of shooting the innocent protesters,



inaction of the State and Central Government, other than that nothing more is found in the hand bill.

11. Apart from the hand bill none of the witnesses state that what are the words used in abusing the defacto complainant and how they threatened them, what is the mode of threat. The Hon'ble Apex Court time and again held that the protest is the fundamental right and mere threat would not constitute any offence, from the materials available in the charge sheet. It is found that no offence is made out warranting Trial. In view of the same, the continuation of proceedings against the petitioner and other accused is an abuse of process of law. Hence, the proceedings in C.C.No.216 of 2018 is to be quashed.

12. In this case, A2 is similarly placed accused, though he has not filed any petition, in view of the similar grounds available to A2, the proceedings against A2 also is hereby quashed.

13. In fine, the case in C.C.No.126 of 2018, pending on the file of the learned Judicial Magistrate No.I, Kallakurichi, against both A1 and A2 are hereby quashed.

14. With the above observations, the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

klr

To

1. The Judicial Magistrate No.I, Kallakurichi.
2. The Sub Inspector of Police, Kallakurichi Police Station.
3. The Public Prosecutor, High Court, Madras.

+1cc to Mr.A.Suresh Sakthi Murugan, Advocate, S.R.No.30783

CrI.O.P.No.5959 of 2021 and
CrI.M.P.Nos.3854 & 3855 of 2021

SKY(CO)
RGA(03/08/2021) (02/09/2021)