

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 16.04.2021
CORAM:

THE HON'BLE MR. JUSTICE M. NIRMAL KUMAR

CRL.O.P.No.6963 of 2021
and
Crl.MP.No.4609 of 2021

George

... Petitioner/ Accused 2

Versus

The State rep. by
The Inspector of Police,
Taramani Police Station,
Adayar, Chennai.

... Respondent/Complainant

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to in C.C.No.5721 of 2018 on the file of the 18th Metropolitan Magistrate Saidapet, Chennai - 15 and quash the same along with the charge sheet.

For Petitioner : Mr.S.Manoharan
For Respondent : Mr.M.Mohammed Riyaz,
Additional Public Prosecutor

ORDER

The petitioner is arrayed as A2 in C.C.No.5721 of 2018 and he is facing trial for the offence under Section 143, r/w 7(1) (a) of CLA, Act has filed the quash petition.

2.The gist of the case is that the defacto complainant is the Sub-Inspector of Police attached to the respondent police station. On 02.04.2018 the defacto complainant lodged a Special Report stating that when she was engaged in patrolling duty in Ramanjiam I.T. Park in Old Mahabalipuram Road, she saw some persons belonging to Forum for IT employee (FITE), presided by its leader A1/Tmt. Parimala along with six male members had assembled there without any permission and raised slogans against the State and Central Government more specifically in respect of closure of Sterlite Industry and to form the Cauvery Appellate Tribunal, thereby causing disturbance to the public transport. The defacto complainant/Sub-Inspector of Police had informed them that they cannot cause disturbance to the public transport, despite the same, they continued to do so. The defacto complainant therefore arrested the said obstructors. The petitioner is one of the obstructors. On conclusion of investigation the respondent police after examining LW.1 to LW.5, filed by the charge sheet against the petitioner and others.

3.It is the contention of the petitioner that the petitioner is a social activists and he has been raising voice against the Sterlite issue and the Cauvery Management Board. The Supreme Court of India right under Part III of the Constitution of India, held such right to be the fundamental right guaranteed to a citizen, which cannot be curtailed in unfair and arbitrary manner and their right has been protected under Section 19 of the Constitution. Further, it is submitted that this case is a cooked up case where there is no independent witnesses. LW.1 to LW.5 are all police personnel attached to the respondent police and they can only support the case of the respondent police. In support of the contention, the learned counsel for the petitioner relied upon the judgment in Mahaboob Basha Vs. Sambanda Reddiar and others reported in 1994 (1) Crimes, Page No.477 wherein it was held that the role of police officials will be confined only in respect of preventive action as envisaged under Section 41 of Cr.P.C., Further, to register a case under Section 188 of IPC there must be specific complaint from the public servant in writing to the Judicial Magistrate concerned, who shall take cognisance under Section 195 (i) (a) of the Code of Criminal Procedure, which was not done in this case. He further submitted that the petitioner and others have only expressed their voice against the arbitrary action of the Government, which is only a democratic right. Expressing displeasure against the action of the Government is within the protection given by the Constitution in a democratic right where dissent is permissible. He further submitted that in a similar situation, this Court passed an order in the case of Shylendar Vs. Inspector of Police, J-1, Saidapet Police Station, Saidapet, Chennai, (Crl.O.P. No. 3855 of 2019 dated 13.02.2019) wherein it was held that expect the official witness no one spoken about the occurrence and no one was examined to substantiate the charge. It was also seen from the charge sheet that the charges are simple in nature and trivial. The learned counsel for the petitioner also relied upon the judgment in Mahaboob Basha Vs. Sambanda Reddiar and others reported in 1994 (1) Crimes, Page No.477. He further relied upon another judgment of the Madurai Bench of the Madras High Court in the case of Jeevanandham Vs. State rep.by, Inspector of Police, Velayuthampalayam Police Station, Karur District, (Crl.OP No. 1356 of 2018 etc., batch dated 20.09.2018) wherein this Court had elaborately discussed about the duties and powers of the Police officers in dealing with such cases.

4.Further, it was contended that it was only a peaceful demonstration exhibiting their grievances against the government, which is permissible under law. In view of such demonstration no untoward incident had taken place whereby public disturbance or nuisance was caused. The respondent police attempts to throttle the democratic voice and restraining the petitioners from by falsely implicated them in this case.

5.The learned Additional Public Prosecutor appearing for the respondent police would submit that the First Information Report had been registered invoking Section 188 of IPC. Admittedly, in this case no public servant had lodged the complaint, which is sine quo non for registering the First Information Report, as held in the judgment of this Court in the case of Jeevanandham Vs. State rep.by, Inspector of Police, Velayuthampalayam Police Station, Karur District. In that decision, it had been elaborately dealt with this aspect. In view of such prohibition under Section 188 of IPC, further proceedings was not approved. Further, the defacto complainant/Sub-Inspector of Police, who had registered the case submitted a Special Report, based on which the case came to be registered and investigated. In this case, no public witness has been examined since they have not come forward be a witness but that alone will not result in the investigation being declared bad in law. The petitioners are unable to produce any material to show that the investigation is biased. The petitioner and the others ought to have obtained permission before conducting any public demonstration. The act of the petitioner and others was in violation of law and order, which cannot be approved as it would lead to lawlessness. In any event, the contention of the petitioner will be considered during trial and therefore he prayed for dismissal of the Petition.

6.Considering the rival submissions and materials, it is seen that the Sub-Inspector of Police submitted a Special Report about the incident. No where in the special report, it seen that the there was any prohibitory order in force and such prohibitory order was given vide publicity and such promulgation of order of public declaration has been made. Further, there is clear procedure contemplated for invoking Section 188 of IPC. There have been no material to show disturbance of law and order, which led to any disturbance of public peace and tranquility.

7.LW.2 is another Sub-Inspector attached to the respondent police. Strangely his presence has not been mentioned by other LW.1, LW.3 and LW.4, which creates doubt as to whether LW.2 was present in the scene of occurrence. LW.3 & LW.4 are Head Constables attached to the respondent police, who had also stated in confirmity with LW.1. All these witnesses have only spoken about the conduct of the protest by the petitioners in a democratic manner and there is nothing to show the disturbance to traffic or it created hatredness among the public.

8.Thus, looking the case in any angle, it is seen that no case is made out against the petitioner who is part of the movement in Forum for IT employees. The forum only attempted to expose their democracy right and displeasure, over certain issues, which is absolutely permissible and it is their fundamental right. In view of the same, this Court finds that continuance of the proceedings against the petitioner would amount to abuse process of law. Hence, the Criminal Original Ppetition is allowed and the proceedings in C.C.No.5721 of 2018

is hereby quashed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS)

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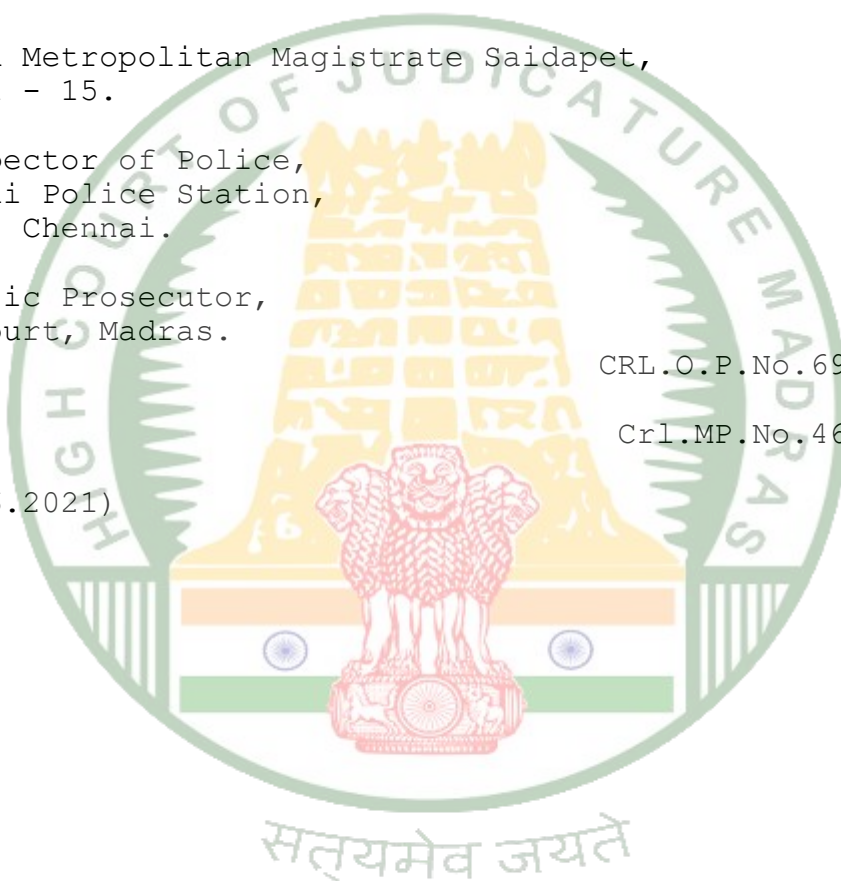
Sub Assistant Registrar

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To

- 1.The 18th Metropolitan Magistrate Saidapet,
Chennai - 15.
- 2.The Inspector of Police,
Taramani Police Station,
Adayar, Chennai.
- 3.The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.6963 of 2021
and
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