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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 30.06.2021

PRONOUNCED ON : 07.07.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.10342 of 2021 and
Crl.M.P.Nos.6242 & 6243 of 2021

Vaiko ... Petitioner/Accused No.1

Versus

1.State by., its,
The Sub Inspector of Police,
Chintadaripet Police Station,
Triplicane,
Chennai.
(Crime No.304/2018). ...Respondent/Complainant

2.Kumaresan,
Head Constable (No.24749),
F-1, Cintadaripet Police Station,
Chennai 600 002. ... Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the case in C.C.No.68 of 2019 on the file of the Additional Special Court for M.P's and M.L.A's, Chennai and quash the same.

For Petitioners: Mr.M.Ajmal Khan, Senior Counsel
for Mr.P.Subbaraj.

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

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ORDER

The petitioner, who is facing trial before the learned Additional Special Court for M.P's and M.L.A's, Chennai (trial Court) for offence under Sections 143, 290, 353 of IPC and Section 41 of the Tamil Nadu City Police Act, 1888 and Section 7 (1)(a) of the Criminal Law Amendment Act, 2005 in C.C.No.68 of

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2019, has filed the Quash Petition.

2.The gist of the case is that on 09.10.2018, at about 11.25 a.m., one Nakeeran Gopal arrested in Crime No.212 of 2018, for offence under Section 124 of IPC by the Police attached to the D-4 Zam Bazaar Police Station, Triplicane. For safety and security of the said Nakeeran Gopal was kept in confinement in the office of the Deputy Commissioner of Police, Triplicane. At that time, the petitioner, General Secretary of MDMK Political Party along with A2-Karthick, A3-Amma Murugan, A4-Mohan and A5-Ramadoss lead a group of 45 members attempted to enter into the office of the Deputy Commissioner Office, Triplicane to meet Nakeeran Gopal without obtaining Police permission, despite restraining and warning of the Police. At that time, the petitioner and others raised slogans against the State and Central Government and obstructed the traffic in A.N Road, caused disturbance to the general public. The petitioner and others were informed about the prohibitory order under Section 41(2) of the Tamil Nadu City Police Act is in force and no protest or Dharna without permission to be held. This was not headed by the petitioner and they continued to obstruct the free flow of traffic and public movement. The accused could not be arrested, since they got mixed up with the general public. Thereafter, a complaint was lodged by the 2nd respondent, the Head Constable Kumaresan attached to the 1st respondent Police. The 1st respondent Police received the complaint, registered FIR in Crime No.304 of 2018, conducted investigation and on completion of investigation, filed the charge sheet for offence under Sections 143, 290, 353 of IPC and Section 41 of the Tamil Nadu City Police Act, 1888 and Section 7(1)(a) of the Criminal Law Amendment Act, 2005, listing eight witnesses as LW1 to LW8 and documents. The trial Court took cognizance of the offence and assigned C.C.No.68 of 2019 and issued summons to the petitioner and other accused, against which the present Quash Petition.

3.The learned Senior Counsel appearing on behalf of the petitioner submitted that originally the FIR was registered for offence under Sections 143, 290 and 353 IPC and subsequently, the charge sheet was filed before the trial Court including the offence under Section 41 of the Tamil Nadu City Police Act and Section 7(1)(a) of the Criminal Law Amendment Act, 2005. Therefore, the impugned charge sheet is not proper. The ingredients of the offence under Section 353 IPC is that the accused person should have assaulted the public servant or used criminal force with intent to prevent or deter the public servant from discharging his duty. But in this case, there is no allegation against the petitioner to show that he assaulted public servant and used any criminal force. The learned Senior Counsel further submitted that the petitioner conducted the

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protest, for the arrest of Nakeeran Gopal, a well known investigative Journalist for writing certain articles. According to the petitioner, the case has been foisted against Nakeeran Gopal to throttle the system of press and deter others not to write such articles in future. Mere raising slogans cannot be termed as unlawful assembly and prevented public servant in discharging their duty.

4.The learned Senior Counsel for the petitioner further submitted that in similar situation, this Court in the case of "Dr.Dasthagiri Reddy Versus the State in Crl.O.P.No.17741 of 2017, dated 01.08.2019" held that "merely an agitation conducted by the students and staff of the University will not attract the provisions of Section 353 of IPC and gathering of a group of persons who were conducting the agitation cannot be termed as unlawful assembly". Hence, the ingredients of Section 143 of IPC will not get attracted in this case. Further, the Hon'ble Apex Court in the case of "Manik Taneja & Anr., Versus State of Karnataka & Anr., in S.L.P(Crl.)No.6449 of 2014, dated 20.01.2015" had held that "it appears that no force was used by the appellants to commit such an offence. There is absolutely nothing on record to show that the appellant either assaulted the respondent or used criminal force to prevent the respondent from discharging his official duty." Thus, uncontroverted allegations were made against the petitioner and it would never attract the ingredients of offence under Section 353 IPC. He further submitted that the alleged offence under Section 41 of the Tamil Nadu City Police Act, 1888 is not made out and there is no material to show that on 19.10.2018, the Commissioner of Police, passed any prohibitory order. Further, there was no promulgation of such order as contemplated. It is not denied that the journalist Nakeeran Gopal was kept in the custody of the office of the Deputy Commissioner of Police, Triplicane. The petitioner not only the General Secretary of the Political Party, he is also an advocate himself. Any person detained under Section 41(d) of Cr.P.C., shall be entitled to meet his Advocate of his choice. Even till that point of protest, there was no clarity when and where Nakeeran Gopal arrested and whether the arrest informed to the members of his family or to any one.

5.The learned Senior Counsel further submitted that the said Nakeeran Gopal was arrested in Crime No.212 of 2018 by the D-4 Zam Bazaar Police Station, Triplicane while he was in Airport. Thereafter, he was brought to the office of the Deputy Commissioner of Police, Triplicane and the entire arrest and confinement was kept in secrecy which caused doubt and apprehension in the manner in which Nakeeran Gopal was arrested and there was possibility that Nakeeran Gopal could be tortured. Hence, the democratic forces protested the manner in which the

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said Nakeeran Gopal was confined. On a demurer admitting the protest that it is only a slight arm to the public movement which is not an offence under Section 95 of IPC. The interest of the detained person has to be looked into. Further, the 1st respondent ought to have seen that the right to peaceful protest emanates from right to freedom of speech and expression guaranteed under the Article 19(1)(A) of the Constitution of India.

6.In support of his submissions, the learned Senior Counsel for the petitioner relied on the following cases:-

(i)The Hon'ble Apex Court in the case of "Manik Taneja & Anr., Versus State of Karnataka & Anr., in Criminal Appeal No.141 of 2015".

(ii)This Court in the case of "Erwadi Mohamad Kasim Versus State in Crl.A.No.589 of 2008 dated 01.07.2019".

(iii)This Court in the case of "Dr.Dasthagiri Reddy Versus the State in Crl.O.P.No.17741 of 2017, dated 01.08.2019."

(iv)Extensively placed reliance on the order of this Court in the case of "State Rep. by the Inspector of Police, D-4, Zam Bazaar Police Station, Chennai Versus Nakeeran Gopal in Crl.O.P.No.26888 of 2018, dated 07.01.2019", in which this Court had held that "the respondent was arrested on 09.10.2018 at 8.30 am in the Domestic Airport at Meenambakkam. The arrest intimation form does not state anything about the reason for arrest or the materials seized by the police or the name of the police station which is carrying out the arrest and the vital material facts are missing in the arrest intimation form". Even the arrest intimation form does not contain the fundamental particulars and it is in clear violation of the guidelines issued by the Hon'ble Apex Court in the case of "D.K.Basu Versus State of West Bengal reported in (1997) 1 SCC 416". Further, the learned Magistrate refused to remand the said Nakeeran Gopal under Section 167 Cr.P.C., and found that in the case of Nakeeran Gopal (cited supra), the procedures stipulated under the Code of Criminal Procedure, 1973 and the guidelines issued by the Hon'ble Apex Court were not followed.

7.In view of the same, the learned Senior Counsel submitted that the protest shown by the petitioner is lawful and natural. On this score, he prayed for quashing the proceedings.

8.The learned Government Advocate (Crl. Side) appearing on behalf of the respondents submitted that on the complaint of the 2nd respondent, the Head Constable attached to the 1st respondent Police, an FIR in Crime No.304 of 2018 for offence under Section 143, 290 and 353 IPC was registered. During investigation, the 1st respondent Police visited the scene of occurrence, prepared Observation Mahazar and Rough Sketch, examined the witnesses

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present in the scene of occurrence. Finding that the petitioner had violated the prohibitory order passed under Section 41(2) of the Tamil Nadu City Police Act along with other accused, the 1st respondent Police included Section 41 of the Tamil Nadu City Police Act, 1888 and Section 7(1)(a) of the Criminal Law Amendment Act, 2005 by way of alteration report dated 12.11.2018 and filed the charge sheet on 20.11.2018, listing eight witnesses as LW1 to LW8 and annexing documents.

9.This Court considered the rival submissions and perused the materials available on record.

10.In the FIR, it is clearly mentioned that one Nakeeran Gopal arrested in Crime No.212 of 2018 by the Police attached to the D-4 Zam Bazaar Police Station, Triplicane. For enquiry, he was confined in the office of the Deputy Commissioner of Police, Triplicane. At that time, the petitioner had come there and shown his protest. When the petitioner wanted to meet Nakeeran Gopal, he was not allowed.

11.This Court in the case of "State Rep. by the Inspector of Police, D-4, Zam Bazaar Police Station, Chennai Versus Nakeeran Gopal in Crl.O.P.No.26888 of 2018" had held that the mandatory provisions and the procedures contemplated in the Code of Criminal Procedure have not been followed. Even in the arrest intimation, the Police Station details are not found and his arrest was not intimated to the family members or to anyone. The said Nakeeran Gopal was arrested while he was in Airport and kept in confinement in different place other than the Police who had arrested, which caused doubt on the safety of Nakeeran Gopal. The petitioner not only the General Secretary of the MDMK Political Party, he is also an Advocate. As Advocate, he was not allowed to meet the detenue and no reason given for the same. Even in the FIR as well as in the charge sheet, it is clearly mentioned that the petitioner was making protest and the public on coming to know about the detention of Nakeeran Gopal and the petitioner not allowed to meet him, 45 members gathered and opposed the same. The gathering of public was spontaneous and the protest was natural. The protest is a fundamental right in a democracy which cannot be termed as illegal, when the protest is for a rightful cause.

12.The witnesses cited are LW1-Kumerasan/2nd respondent, who was on patrol duty in A-Sector and LW5-Jegan Prabhu, Police Constable who was on patrol duty in B-Sector. Both independently stated that the protest was held by the petitioner along with 45 persons. Strangely in the complaint, the presence of LW5-Jegan Prabhu is not mentioned by LW2-Kumaresan/2nd respondent. In their statement recorded under Section 161 Cr.P.C., there is no mention about the presence of each other.

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LW6 and LW7 are the witnesses to the Observation Mahazar and Rough Sketch. Both have stated that at about 02.30 p.m., the Observation Mahazar and Rough Sketch were prepared and the occurrence had taken place at about 11.25 a.m. LW2 and LW3 are the alleged eye witnesses. LW2 stated that he saw the crowd gathering in the office of the Deputy Commissioner of Police, Triplicane at about 11.25 p.m., for arrest and detantion of Nakeeran Gopal and the Police requested the protesters to disburse. LW3, the other witness specifically stated that at about 03.15 p.m., he came to the scene of occurrence and saw the protesters. Thus, the statement of the witnesses creates doubt about the manner in which the Observation Mahazar drawn at 02.30 p.m., when the crowd was very much present till 03.15 p.m. LW4, the Special Sub Inspector of Police stated that he was on patrol duty and saw the Police requested the protesters to disburse. Other than that there is nothing more. Thus, from the charge sheet, the statement of the witnesses are contradictory to each other which leads to inference that the case is highly improbable.

13.The Hon'ble Apex Court had held that use of criminal force with intent to prevent or deter the public servant from discharging his duty and criminal intimidation would not made out when there is no material to show that there was use of any force and threat should be real. Further, mere expression of words would not suffice. This Court had clearly held that the arrest of Nakeeran Gopal is of concern and the learned Magistrate refused the remand and granted bail to the said Nakeeran Gopal on 09.10.2018 and it is held that the foundational requirement was not followed which is in clear violation of guidelines issued in the case of "D.K.Basu Versus State of West Bengal reported in (1997) 1 SCC 416". Thus, the protest was spontaneous. Except the petitioner and other four accused, all the other persons are public and they spontaneously participated in the protest. Hence, the protest of the petitioner cannot be stated as illegal. As stated above, mere expression of protest would not amount to the commission of any offence.

14.In view of the above, this Court finds that no offence is made out against the petitioner and the other four named accused and hence, the continuation of criminal prosecution would only amount to abuse of process of Court. Hence, this Court is inclined to quash the proceedings against the petitioner. Further, the other four named accused in the charge sheet viz., A2-Karthick, A3-Amma Murugan, A4-Mohan and A5-Ramadoss are also similarly placed as that of the petitioner. Hence, this Court is inclined to quash the proceedings against all the accused named in the charge sheet.

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15.In the result, the proceedings in C.C.No.68 of 2019 pending on the file of the trial Court is quashed against all the accused. This Criminal Original Petition is, accordingly, allowed. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

1.The Additional Special Court for M.P's and M.L.A's,
Chennai.

2.The Sub Inspector of Police,
Chintadaripet Police Station,
Triplicane,
Chennai.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.P.Subburaj, Advocate, S.R.No.31579

PRE-DELIVERY ORDER IN
Crl.O.P.No.10342 of 2021

PL(CO)
CB(05/08/2021)

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