



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NOS.14854 & 17795 OF 2021

AND

CRL.M.P.NOS.8074 & 8075 AND 9773 & 9774 OF 2021

A.S.Ismail

... Petitioner/17th Accused in O.P.14854/2021

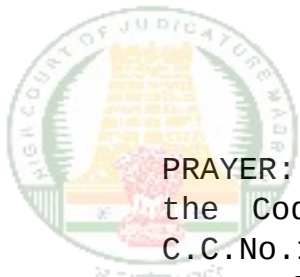
1. Kunangkudi Anifa @
Anifa Ravuthar Naina Mugahammed
2. Tamim Ansari @ Thamimum Ansari
3. Basheer Ahamed @ Konica Baseer
4. Muhamed Kan Pakavi @ Mohamed Khan
5. S.M.Abdul Rahim Patel
6. S.M.Bakkar
7. Muhamed Munir @ Muhammed Muneer Sait
8. S.M.Sikkandar
9. Hamid Bakri

... Petitioners in O.P.17795/2021

Versus

State rep. by its
The Sub-Inspector of Police,
F-1, Chintadripet Police Station,
Chennai.

... Respondent in both O.Ps.



PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.16 of 2021 pending before the Additional Special Court No.II for trial of cases related to member of parliament and members of legislative assembly of Tamil Nadu, Chennai and quash the same as illegal.

For Petitioner : Mr.I.Abdul Basith
in both O.Ps.

For respondent : Mr.Hasan Mohammed Jinnah
in both O.Ps State Public Prosecutor,

Assisted by
Mr.A.Damodharan,
Additional Public Prosecutor

COMMON ORDER

The petitioners, who are facing trial in C.C.No.16 of 2021, for offence under Sections 143, 285, 341, 353 and 188 IPC before the learned Additional Special Court No.II for trial of cases related to MPs & MLAs, Chennai, have filed the Quash Petition.

2.The case of the prosecution is that on 18.09.2012, at about 3.30 p.m., near Annasalai Dams Road junction, the members, belonging to Tamilnadu Muslim Organisation, had assembled and raised protest for a short film produced in America in the name of "Innocence of Muslims". According to the petitioners, it caused ill-will and dis-repute to the Muslim Community. Due to which, the petitioners have been falsely implicated in this case as though they have violated the prohibitory orders and formed themselves in an unlawful assembly, disobeyed the public servant and obstructed the public.

3. The learned counsel for the petitioners would submit that in this case, First Information Report came to be registered on 18.09.2012 and within few days, charge sheet has been filed on 06.10.2012. No proper investigation has been conducted. Further, there is no materials to show that prohibitory order was in force at that point of time and the



same was published in the manner known to law. Further, the learned counsel placed reliance in the order passed by this Court in W.P.No.10560 of 2015, dated 19.06.2015 in the case of A.Santhos Yadav /vs/ Bar Council of Tamil Nadu, wherein this Court has clearly held that for registering a case under Section 188 IPC, complaint from the public authority is necessary. In this case, no public servant has lodged a complaint and the complaint itself is registered at the instance of the Sub-Inspector of Police.

4. He would further submit that freedom of speech and expression is guaranteed under the Constitution and nowhere mentioned, that particular offence is committed. The offence cannot be made out by mere stating facts. Specific overtact of the accused to be stated, supported with the statements and documents. Thus, no prima facie case is made out against the petitioners for the aforesaid offences. The learned XIV Metropolitan Magistrate, Egmore, Chennai insisting the petitioner to face the case. Subsequently, the case was transferred to the Additional Special Court for Trial of Cases related to M.P's and M.L.A's , Chennai and the same was taken on file and assigned as C.C.No.16 of 2021. Since, there is no offence made out in the charge sheet, having no other option, filed this quash petition. Hence, the criminal proceedings initiated against the petitioner in C.C.No.16 of 2021 pending on the file of the learned the Additional Special Court for Trial of Cases related to M.P's and M.L.A's , Chennai, is liable to be quashed.

5.He further submitted that this Court as well as the Hon'ble Apex Court time and again held that the complainant himself cannot be an investigating officer, which would vitiate the entire investigation. In support of his submissions, the learned counsel for the petitioners relied upon the judgment of this Court in the case of Jeevanandham and others Vs. State Rep. by Inspector of Police and another reported in (2018) 2 LW CrI 606.

6.The learned State Public Prosecutor appearing on behalf of the respondent submitted that the petitioners and others assembled near Annasalai Dams road Junction and raised protest for a short film produced in America and also disturbed the traffic and public movement. He further submitted that the



respondent was on patrol duty along with other Police and warned the petitioners as well as the other protesters to disperse citing the prohibitory order is in force. Despite warning, the petitioners and others refused to disperse, on the other hand, they raised slogans and caused disturbance to the public. The points raised by the petitioners are to be decided only during the trial and not in the Quash Petition and therefore, he strongly opposed the petition and prayed for dismissal of the same.

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

8.Considering the rival submissions and on perusal of the materials, it is admitted fact that the petitioners and others raised protest which is their fundamental right, no public lodged complaint and no public got affected, due to the protest conducted by the petitioner and others. Hence, this Court finds that the petitioner and others have only raised slogans and shown protest against film produced in America in the name of "Innocence of Muslims". According to the petitioners, it caused ill-will and dis-repute to the Muslim community. Raising slogans would not amount to commission of offence, by dissenting and showing Protest is the Hallmark of Democracy, which is a fundamental right under Constitution of India.

9. Admittedly in these cases, the occurrences took place in a public place, in public view, surprisingly no public gave complaint, which causes 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 Cr1. 606" had clearly held that the police officials are not empowered to register a case under Section 188 IPC and the same is barred under Section 195 Cr.P.C. There is no material to show that there was any promulgation of prohibitory orders which was communicated to the public and there was any disobedience by the petitioner. Further, in consequence to the protest, the prosecution failed to show whether any trouble occurred. The respondent Police failed to follow the guidelines issued by this Court in Jeevanandham (Cited Supra). In several cases, this Court quashed the proceedings against the accused/protesters on similar ground.



10. In the result, both the Criminal Original Petitions are allowed and the final report in C.C.No.16 of 2021 pending on the file of the Additional Special Court No.II for M.P's and M.L.A's , Chennai, is hereby quashed as against the petitioners and others, who are similarly placed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

mrp

To

1. The Additional Special Court No.II for M.P's and M.L.A's , Chennai.
2. The Sub-Inspector of Police,
F-1, Chintadripet Police Station,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

+2ccs to Mr.I.Abdul Basith, Advocate, S.R.No.52140 & 52141

CRL.O.P.Nos.14854 &
17795 of 2021

MG(CO)
RLP(10/11/2021)