



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.14089 of 2021

1.Premkumar
2.Yuvaraj
3.Dinesh
4.Lokesh

... Petitioners/Accused

Versus

State represented by,
The Inspector of Police,
M-5, Ennore Police Station,
Chennai.

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in Crime No.571/2018 on the file of the respondent and quash the same.

For Petitioners: Mr.P.Parthipan

For Respondent : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.571 of 2018, on the file of the respondent Police.

2.The gist of the case is that on 18.07.2018, when the Sub Inspector of Police attached to the respondent Police along with other Police personnels were on patrol duty, at about 12.00 p.m., 37 persons under the leadership of the petitioners 1 and 2 and one Sivasankar had assembled in public place without getting permission and raised slogans against the public functionary and caused disturbance to the public and free movement of traffic. When they were asked to disperse and not to create any law and order problem, they failed to do so. Hence, they were arrested in the spot by the respondent Police and a case in Crime No.571 of 2018 was registered, for offence, under Sections 143, 341, 188 and 353 IPC, against which the present Criminal Original Petition.



3.The learned counsel for the petitioner submitted that at the time of occurrence, the petitioners are law college students, who shown protest in a democratic manner which is a right guaranteed under the Constitution of India. The petitioners along with others held protest in the corner of the road. It is not the case that the petitioners and others blocked the free movement of traffic and caused any inconvenience to the general public. The petitioner and other accused are law college students, who were raised slogans against the public functionary and nothing more. The petitioners are the students of the Chennai Dr.Ambedkar Government Law College, Pudupakkam. The petitioners were not aware about the registration of the above case and they came to know about the same, only when they approached for getting enrolment in the Tamil Nadu Bar Council. The petitioners on dedication and hard work had completed the law course and they have a big aim in this field. Due to the pendency of the FIR, the petitioners unable to get enroled and their entire carrier is now questionable.

4.The learned counsel for the petitioners submitted that this Court in catena of judgments have clearly held that the Police personnel are not empowered to register an FIR under Section 188 IPC. There is nothing to show that on the date of occurrence, there was any prohibitory order in force and whether that order was communicated in the prescribed manner is also not known. The learned counsel further submitted that this Court in the cases of "Madhan Mohan Versus The State and another in CrI.O.P.Nos.23129 & 23127 of 2019" on the similar grounds, quashed the proceedings against the accused. Further, in the case of "Jeevanandham and others Vs. State Rep. by Inspector of Police and another reported in (2018) 2 LW CrI. 606", had given an authoritative pronouncement regarding the cases to be registered and investigated under Section 188 IPC and also issued certain guidelines, which is violated in this case. Right to Dissent is the Hallmark of Democracy, the petitioners only expressed their displeasure which is their fundamental right. Hence, he prayed for quashing of the investigation against the petitioners.

5.The learned Additional Public Prosecutor appearing for the 1st respondent Police submitted that the Sub Inspector of Police attached to the respondent Police Station along with other Police were on patrol duty and found the petitioners and other accused had formed themselves unlawfully without any permission near Bharath Nagar Junction, Ennore and started raising slogans against the public dignitaries without any reason or cause. When they were asked to disperse, they failed to do so. Hence, the 1st respondent Police has registered a case against the petitioners and other accused. Only during investigation, the



contention of the learned counsel for the petitioners to be ascertained and hence, he prayed for dismissal of this petition.

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

7. Considering the rival submissions and on perusal of the materials, this Court finds that the petitioners have only raised their objection in a democratic manner which is a right guaranteed under the Constitution of India. Raising slogans against the Government itself would not amount to any commission of offence, which is a fundamental right under Constitution of India. Admittedly in this case, the occurrence had taken place in the public place and view, no public or independent witness examined by the prosecution, 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 CrL. 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 any prohibitory order which was communicated to the public and there was any disobedience by the petitioners. Further, in consequence to the protest, the prosecution failed to show whether any trouble injuries occurred. Thus, the respondent Police did not follow the guidelines issued by this Court in Jeevanandham (Cited Supra). In several cases, this Court quashes the FIR against the accused/protesters on the similar ground.

8. The petitioners are the students of the law college, who are normally active and be the first persons to show protest against any irregularities. Thus, the allegations made in the charge sheet, even if taken at face value and accepted in entirety do not prima facie constitute any offence or make out a case against the accused.

9. In view of the above, the FIR in Crime No.571 of 2018, on the file of the respondent Police, is hereby quashed against the petitioners and other accused, who are similarly placed. Accordingly, this Criminal Original Petition is allowed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar



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To

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- 1.The Inspector of Police,
M-5, Ennore Police Station,
Chennai.
- 2.The Public Prosecutor,
High Court, Madras.

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SRA(CO)
CT/03/01/2022