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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.09.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.16424 OF 2021

AND

CRL.M.P.NO.8959 OF 2021

1.Kadhar Moideen
2.Riyas
3.Abudhagir
4.Amanulla
5.Jagir Usain
6.Muhammed Basirla
7.Shak Usain

...Petitioners

Versus

State rep.by its
The Special Sub-Inspector of Police,
Gangavalli Police Station,
Salem. (Cr.No.322 of 2020)

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to Cr.No.322 of 2020 on the file of the respondent and quash the same as illegal and without jurisdiction.

For Petitioners : Mr.I.Abdul Basith

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

The petitioners, who are accused in Crime No.322 of 2020 for offences under Sections 143, 188 IPC and 51(1)(b) Disaster Management Act, 2005, have filed the Quash Petition.



WEB COURT

2.The gist of the case is that on 13.06.2020, at about 09.10 a.m., when the respondent Police along with two other police personnel was on patrol duty to ensure whether the prohibitory order under Section 144 of Cr.P.C., passed by the Central and State Government is being properly followed, at that time, saw the petitioners assembled together and raising slogans against the Central Government for cases registered for showing protest. The respondent warned the petitioners that the prohibitory order under Section 144 of Cr.P.C., is in force and also explained, the danger of spreading of COVID-19 pandemic likely and asked them to disburse. Since they refused to do so, they were arrested and a case registered against them in Crime No.322 of 2020 for offences under Sections 143, 188 IPC and 51(1)(b) Disaster Management Act 2005 and FIR sent to the Judicial Magistrate No.II, Attur and other copies were sent to higher officials and the case was sent for enquiry to the Taluk Inspector of Police, Veeraganur.

3.The contention of the learned counsel for the petitioners is that the registration of FIR in Crime No.322 of 2020 for the offences under Sections 143, 188 of IPC and 51(1)(b) Disaster Management Act, 2005, is in violation of Section 195(1)(a)(i) of Cr.P.C and against the guidelines of this Court in the case of "Jeevanandham and Ors. Versus State and Ors. reported in MANU/TN/5423/2018". He further submitted that the respondent initiated a suo-moto criminal prosecution against these petitioners on the allegation that the petitioners illegally assembled and protested in the public road without any prior permission against the arrest of Senior Journalists and activists for participating in the Anti-CAA, NRC protest. The FIR neither revealed any specific role of the petitioners nor attracted punishable offences under Sections 143, 188 IPC and 51(1)(b) Disaster Management Act, 2005. The registration of FIR is in violation of the petitioners' fundamental rights guaranteed under Article 14, 19(1)(a), 19(1)(b) and 21 of Constitution of India. Further, in the FIR, there is no mention as to how the petitioner formed is an unlawful assembly and when there was no prohibitory order declared and communicated, there is no promulgation of any order which has been violated by the petitioners. Further, without written complaint of public servant, no FIR can be registered for offence under Section 188 of IPC. He further submitted that the complainant is none other than the Special Sub-Inspector of Police, Gangavalli Police



Station, Salem, who registered the complaint and investigated the case, which is prohibited in law. Further, the FIR registered and pending without filing of charge sheet for more than a year is barred by limitation under Section 468(2)(b) Cr.P.C. and keeping the same pending will not serve any purpose and the petitioners will be put to irreparable loss and hardship.

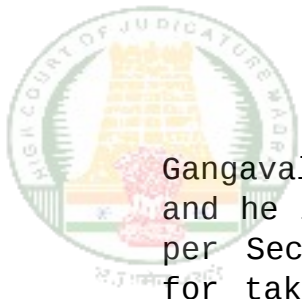
4.The learned counsel for the petitioners relied upon the citation of Hon'ble Apex Court in "Himatlal K.Shah Versus Police Commissioner, Ahemdabad", wherein it is held that

"..... State cannot by law abridge or take away the right of assembly by prohibition assembly on every public street or public place. The State can only make regulations in aid of the right of assembly of each citizen and can only impose reasonable restrictions in the interest of public order."

Further, he relied upon the decisions of this Court in "Jeevanandham and Ors. Versus State and Ors. reported in MANU/TN/5423/2018" and in "Mohamed Nazim Versus State reported in MANU/TN/1906/2019".

5.The learned Additional Public Prosecutor appearing for the respondent submitted that on 13.06.2020, there was a prohibitory order and without permission, the petitioners assembled and protested in the public road against the arrest of Senior Journalists and activists for participating in the Anti-CAA, NRC protest and caused inconvenience to the public and attempted to assemble in the middle of the road and cause disobedience to the order promulgated by the public servant. Despite warning of the police, they continued to conduct the protest. Hence, a case, came to be registered. The learned Additional Public Prosecutor admits that the complainant in this case is none other than the Special Sub-Inspector of Police, Gangavalli Police Station, Salem. Further, for registration of the FIR under Section 188 of IPC, the sin quo non is a written complaint of the public servant concerned. In this case, the Special Sub-Inspector of Police is not the public servant concerned.

6.Considering the rival submission and on perusal of the materials it is seen that the Special Sub-Inspector of Police,



Gangavalli Police Station, Salem, had registered the above case and he is the complainant and investigating officer as well. As per Section 195 (1)(a)(i) of Cr.P.C., there is a specific bar for taking cognizance of the offence under Section 188 of IPC. Further it is categorically held that the word used under Section 188 of IPC is "public servant lawfully empowered" and the word used in Section 195(1)(a)(i) is "public servant concerned". The very terminology in both the provision makes it clear that not all public servants falling under Section 21 of IPC can be a complainant, it is only the public servant who has been specifically authorized, by a specific order in this regard, who can file a written complaint before the concerned Judicial Magistrate Court. Thus there must be a complaint by the public servant whose lawful order has not been complied with. The complaint must be in writing. The provisions of Section 195Cr.PC are mandatory. Non-compliance of it would vitiate the prosecution and all other consequential orders. In this case, admittedly there is no such complaint which is sin quo non to register the case and to proceed further. Further 468 Cr.P.C is a Bar now.

7.In view of the above, the continuation of the investigation against the petitioners would amount to abuse of process of law. Hence, the investigation in Crime No.322 of 2020 on the file of the respondent is hereby quashed. This Criminal Original Petition is allowed accordingly. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

sms

To

1.The Judicial Magistrate No.II,
Attur.

2.The Special Sub-Inspector of Police,
Gangavalli Police Station,
Salem. (Cr.No.322 of 2020)



3.The Public Prosecutor,
High Court, Madras.

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RGN(CO)
RVM(10/11/2021)

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