



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.09.2021

WEB COPY

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.15682 of 2021 and
Crl.M.P.Nos.8544 & 8546 of 2021

1.Ramalingam
2.Shahul Hameed
3.Arch Arumugham
4.Ponnurangam

... Petitioners

Versus

The State by:-
The Inspector of Police,
K-8 Arumbakkam Police Station,
Chennai 600 106.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.9351 of 2017 on the file of learned V Metropolitan Magistrate Court, Egmore, Chennai and quash the same.

For Petitioners : Mr.S.M.Muralidharan for
Mr.S.Ravikumar

For Respondent : Mr.A.Damodaran,
Additional Public Prosecutor

ORDER

The petitioners, who are facing trial before the learned V Metropolitan Magistrate, Egmore, Chennai in C.C.No.9351 of 2017, for offence under Sections 143 and 188 IPC, have filed the above Quash Petition.

2.On information, the respondent Police registered a case in Crime No.998 of 2017 on 14.06.2017 against 68 male and 13 female persons. On completion of investigation, charge sheet came to be filed against them, listing five witnesses as LW1 to



LW5 and documents.

3.The gist of the case is that on 14.06.2017, at about 01.00 p.m., the respondent Police/LW5 along with the Police party were on duty, at that time, received an information that in MMDA Colony Main Road, the 1st petitioner being a political functionary of a political party headed a group of 68 males and 13 females totally 81 persons unlawfully assembled without any permission from the authorities concerned and raised slogans against the Government for arresting the political leader. When the respondent Police intervened and insisted them to disburse, the petitioners and other protesters failed to do so. Hence, a complaint was lodged and on completion of investigation charges sheet came to be filed before the learned V Metropolitan Magistrate, Egmore, Chennai and the same was taken on file as C.C.No.9351 of 2017.

4.The contention of the petitioners is that in this case, LW1 to LW5 are all public servants and no private person was examined and cited as witness during investigation. The case of the prosecution is that the petitioners assembled in MMDA Colony Main Road which is a public place and made protest for arresting their political leader. It is highly improbable that no public witness was present in the place of occurrence and no reason has been given for non examination of public witnesses. In this case, the FIR in Crime No.998 of 2017 was registered for offence under Section 188 IPC. As per Section 188 IPC, only the public servant is authorized to lodge a complaint and Section 195 Cr.P.C is clear embargo as to how a complaint to be registered and investigated by the Police for offence under Section 188 IPC. In this case, there is no complaint from the public servant. Hence, the registration of the FIR its void ab initio and continuing the investigation for other offences is also not permitted.

5.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 Cr1. 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. Hence, he prayed for quashing of the proceedings against the petitioners.

6.The learned Additional Public Prosecutor appearing for the respondents submitted that in this case, a complaint was lodged by the respondent Police/the Inspector of Police, K-8 Arumbakkam Police Station, Chennai/LW5. When he was on duty, he got an information that the petitioners and other protectors, had assembled and raised slogans for arresting their political leader and also caused disturbance to the public. Timely intervention of the respondent, further law and problem were averted. The petitioners without getting permission from the authorities concerned have formed themselves into an unlawful assembly restrained the others and caused public disturbance. On completion of investigation, charge sheet has been filed in this case.

7.Considering the rival submissions and on perusal of the materials this Court finds that the petitioners have only raised their objection for arresting their political leader. The final report does not speak about any complaint from anybody from general public regarding any hindrance caused to traffic in that locality. Raising slogans against the Government itself would not amount to any commission of offence, which is a fundamental right under Constitution of India.

8.From the statement of the witnesses, it is seen that LW1 to LW5 present in the scene of occurrence and according to them, the petitioners raised slogans against the Government with regard to arrest of their political leader, they did not do anything more. 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 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 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 proceedings against the accused/protesters on the similar ground.

9. In the result, the proceedings in C.C.No.9351 of 2017, on the file of the V Metropolitan Magistrate Court, Egmore, Chennai is hereby quashed against the petitioners. This Criminal Original Petition is allowed accordingly. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police,
K-8 Arumbakkam Police Station,
Chennai 600 106.
2. The V Metropolitan Magistrate
Egmore, Chennai-600 008.
3. do Through The Chief Metropolitan Magistrate
Egmore, Chennai.
4. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Ravikumar, Advocate, S.R.No.45643

CRL.O.P.No.15682 of 2021

PA(CO)
SB(27/10/2021)