



Crl.O.P.No.17059 of 2021

M.NIRMAL KUMAR.,J

This matter is posted today before this Court under the caption
“For Being Mentioned.”

2. Heard the learned counsel on either side.

3. The learned Additional Public Prosecutor submitted that the name of the Public Prosecutor is incorrectly mentioned in the order. The correct name is “Mr.Hasan Mohammed Jinnah, State Public Prosecutor, assisted by Mr.A.Damodaran, Additional Public Prosecutor”.

4. It is further submitted that the names of the accused in Para No.13 of the final order dated 17.09.2021 are different. The correct names are A1-Thirumurugan, A2-Vaiko, A3-Tisan, A4-Kavinger Validoss and A5-Dhabasikumar.



5. In view of the above, Para No.13 of the order dated

17.09.2021 shall read as follows :

“13. 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 A2-Vaiko. Further, the other four named accused in the charge sheet viz., A1-Thirumurugan, A3-Tisan, A4-Kavinger Validoss and A5-Dhabasikumar 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.”

6. The name of the Public Prosecutor shall also be changed accordingly as stated above.



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7. The Registry is directed to carry out the above said corrections in the order in Para No.13 and in the name of the Public Prosecutor, and issue a fresh copy of the order.

11.02.2022

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11.02.2022



CrI.O.P.No.17059 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.09.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.17059 of 2021

and

CRL.MP.Nos.9328 & 9329 of 2021

Vaiko

...

Petitioner

Versus

1.State by its

The Inspector of Police,
Zam Bazaar Police Station,
Chennai. (Cr.No.74/2018)

2.K.Shanmuga Sundaram

The Inspector of Police,
Zam Bazaar Police Station,
Chennai.

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Respondents

PRAYER: Criminal Original Petition has been filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the case in CC.No.74 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 Petitioner : Mr.C.Nanmaran
For Respondent No.1: Mr.A. Damodaran
Additional Public Prosecutor



ORDER

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The petitioner, who is facing trial in C.C.No.74 of 2019 for offence under Sections 143 IPC, 41(6) CP Act, and 7 (1) (a) of the Criminal Law Amendment Act, 2005, before the Additional Special Court for M.P's and M.L.A's, Chennai (trial Court), has filed the Quash Petition.

2.The gist of the case is that on 20.05.2018 at 17.00 hours, when the 2nd respondent herein was on patrol duty near Kannagi Statue, the petitioner, General Secretary of MDMK Political Party along with Thirumurugan, Tison, Kavinger Validoss, Dhabasikumar led a group of 500 members raising slogans on the eve of memory of Massacre of Tamilians in Sri Lanka with musical instruments and thereby the petitioner and others caused prejudice to the public peace, despite restraining and warning of the Police. 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. Thereafter, a complaint was lodged by the 2nd respondent, the Inspector of Police, Shanmuga Sundaram



attached to the 1st respondent Police Station. The 1st respondent Police received the complaint, registered FIR in Crime No.74 of 2018, conducted investigation and on completion of investigation, filed the charge sheet for offence under Sections 143 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 six witnesses as LW1 to LW6 and documents. The trial Court took cognizance of the offence and assigned C.C.No.74 of 2019 and issued summons to the petitioner and other accused, against which the present Quash Petition.

3.The learned Counsel appearing on behalf of the petitioner submitted that originally the first information report was registered for the offences under Section 143, 188 of I.P.C and 71(xv), 41 of Tamil Nadu City Police Act, 1988 and subsequently charge sheet was filed before the Trial Court for the offences under Sections 143 of I.P.C., 41(6) of CP Act, 7(1)(a) of CLA Act. Therefore, the impugned charge sheet itself is improper and offences mentioned in the final report is not the sequel, to attract the section 143 of I.P.C., the prosecution necessarily to satisfy the ingredients available for unlawful assembly as stated under Section 141 of I.P.C, as per 141 of I.P.C persons should have used criminal force but in the instant case none of the witnesses have stated in their



161(3) of Cr.P.C statement that the petitioner used criminal force or criminal trespass or mischief as contained in the various clauses as mentioned in the section 141 of I.P.C and thereby the offences under Section 143 of I.P.C against the petitioner is liable to be quashed. According to the petitioner, mere raising slogans cannot be termed as unlawful assembly and prevented public servant in discharging their duty.

4.The learned 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.” 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 20.05.2018, the Commissioner of Police, passed any prohibitory order. Further, there was no promulgation of such order as contemplated. It is not denied that the petitioner along with 500 members raised slogans in the eve of Memory of Massacre of Tamilians in Sri Lanka with musical instruments. The petitioner is 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. The learned counsel also submitted that the offence under section 7(1)(a) of Criminal Law Amendment Act, 1932 is not made out as the petitioner has not acted intentionally to obstruct the free movements of others or used violence.

5.The learned Counsel further submitted that the said petitioner was arrested in Crime No.74 of 2018 by the Inspector of Police, Zam Bazaar Police Station, Triplicane while he was near Kannagi Statue. On a demurer admitting the protest that it is only a slight harm 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 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***”,

the learned Counsel submitted that the protest shown by the petitioner is lawful and natural. On this score, he prayed for quashing the proceedings.



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7.The learned Government Advocate (Crl. Side) appearing on behalf of the first respondent submitted that on the complaint of the 2nd respondent, the Inspector of Police attached to the 1st respondent Police, an FIR in Crime No.74 of 2018 for offence under Section 143 of IPC, 41 of TN CPA, 1888 and 7(1) (a) CLA of 2005 was registered. 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 filed the final report on 16.07.2018, listing six witnesses as LW1 to LW6 and annexing documents.

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

9.In the FIR, it is clearly mentioned that the petitioner was arrested in Crime No.74 of 2018 by the Police attached to the Zam Bazaar Police Station, Triplicane.



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10.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. The petitioner is not only the General Secretary of the MDMK Political Party, he is also an Advocate. Even in the FIR as well as in the charge sheet, it is clearly mentioned that the petitioner along with other was showing protest and 500 members had gathered. 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.

11.The witnesses cited are LW1-Shanawaz/Head Constable, LW2-Shanmugam, LW3-Santhosh Kumar, LW4-Thamizselvan, LW5-Ragavan and LW6-Shanmugasundaram, Inspector of Police, who were on patrol duty. All had independently stated that the protest was held by the petitioner along with 4 others and around 500 people had gathered. LW1 to LW5 are the alleged eye witnesses. In their statement recorded under Section 161 Cr.P.C., there is no



mention about presence of other witnesses. LW5 states that he saw the crowd gathering near the Kannagi Statue at about 17.00, on the eve of memory of massacre of Tamilians in Sri Lanka and the Police requested the protesters to disburse. LW3, the other witness specifically stated that at about 17.00 hours., he saw the protesters. LW4, the Owner of the Cooldrinks Shop state that he saw the Police requesting the protesters to disburse. Other than that there is nothing more. The gathering was spontaneous.

12.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 be made out when there is no material to show that there was use of force and the threat should be real. Further, mere expression of words would not suffice. Except the petitioner and other 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.

13.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



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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.

14. In the result, the proceedings in C.C.No.74 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.

Index: Yes/No
Internet: Yes/No
sms

17.09.2021

To

1. The Inspector of Police,
Zam Bazaar Police Station,
Chennai. (Cr.No.74/2018)
2. The Public Prosecutor,
High Court, Madras.

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M.NIRMAL KUMAR, J.

sms

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