



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.17311 of 2021

&

CRL.M.P.No.9498 of 2021

1.Mujuburrahman @ Mujupur Rahiman

2.Abdul Ravuth @ Abdul Rauf

... Petitioners

Versus

State Rep. Sub-Inspector of Police,
Mangalampet Police Station,
Virudhachalm, Cuddalore District.
(In Crime No.222 of 2021)

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in Crime No.222 of 2021 on the file of the Respondent Police and Quash the same.

For Petitioner : Mr.A.Rajamohamed

For Respondents: Mr.A.Damodharan,
Addl. Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash proceedings in Crime No.222 of 2021 on the file of the respondent police.

2. The case of the prosecution is that on 19.06.2021, while the respondent was on routine patrol, the petitioners along with others assembled in front of the house of the first petitioner, which situates at Mangalampet, and participated in a Dharna against the CAA enacted by the parliament, without any prior permission from the concerned authority. Further, it is stated that the defacto complainant asked the petitioner and others to disperse from the said occurrence place and also explained, the danger of spreading of COVID-19 pandemic very much is likely and asked them to disburse. Since they failed to obey the order, the respondent arrested the petitioners and others and registered a case in Crime No.222 of 2021 for the offences punishable under Sections 143, 188 of IPC, r/w. 51(b) Disaster Management Act 2005, & 3 of Epidemic Diseases Act 1987.



3. The learned counsel appearing for the petitioners submitted that the petitioners are a social activist and had been raising voice for the public cause and public welfare, whenever injustice and inaction of the Government machineries. In order to draw the attention of the Central and State Governments, the petitioners along with others several members had protested against CAA enacted by the Parliament. The learned counsel further submitted that the Hon'ble Supreme Court of India has held that the right to freely assemble and also right to freely express once view or constitutionally protected rights under Part III and their enjoyment can be only in proportional manner through a fair and non-arbitrary procedure provided in Article 19 of Constitution of India. He further submitted that it is the duty of the Government to protect the rights of freedom of speech and assemble that is so essential to a democracy. According to Section 195(1) (a) of Cr.P.C., no Court can take cognizance of an offence under Section 188 of IPC, unless the public servant has written order from the authority. Further he submitted that the petitioners or any other members had never involved in any unlawful assembly and there is no evidence that the petitioners or others restrained anybody. The petitioners and the other protesters were wearing face mask and maintained social distance as per the Standard Operating Procedure which can never be termed as unlawful assembly. Since, there is no offence made out in the charge sheet, having no other option except to file this quash petition. Therefore, he sought for quashing the proceeding.

4. In support of his submissions, the learned counsel for the petitioner 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 Cr1 606.

5. The learned Government Advocate (Criminal side) submits that in this case on 19.06.2021 the petitioners and others 4 assembled at Mangalampetat in front the house of the first petitioner and participated in a Dharna against the enactment of CAA by the Parliament, without any prior permission, held protest, caused nuisance to the public and disobeyed the prohibitory orders passed by the police officers. The spread of COVID-19 pandemic was in danger. Without following the protocols, the petitioner and others assembled and made protest and also disturbed the traffic and public movement. He further submitted that the defacto complainant was on patrol duty along with other Police and warned the petitioner as well as the other protesters to disperse citing the prohibitory order is in force. During the COVID-19 pandemic period, the act of the protesters would amount to spread of disease and disturbance to the life of the general public. Despite warning, the petitioner and others refused to disperse, on the other hand, they raised slogans and caused disturbance to the public.



6. 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 petitioners and others have only raised slogans and shown protest against Kalyanaraman, according to the petitioners, they made defamation statement against CAA enacted by the parliament. Raising slogans against the Government 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.

7 . Admittedly in these cases, the occurrences took place in a public place, in public view, surprisingly 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 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.

8. In the result, this Criminal Original Petition is allowed and the proceedings in Crime No.222 of 2021 on the file of the respondent police is hereby quashed as against the petitioners and others similarly placed. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VII)

//True Copy//

Sub Assistant Registrar

mrp

To

1. The Sub-Inspector of Police,
Mangalampet Police Station,
Virudhachalm,
Cuddalore District.



2. The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.17311 of 2021

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