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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.16416 of 2021

and

CrI.M.P.No.8946 of 2021

1.Mohamed Lathifulla

S/o.Mohamed Yusuf

President -Washermanpet All Jamath Federation

No.4, Balasubramani Street,Old Washermanpet,

Chennai - 600 021.

2.God Rafi @ Syed Rafi basha,

S/o.Hayath Basha,

President -SDPI Royapuram Constituency,

No.76/44C, Muthaiha Maistry Street,

Old Washermanpet,

Chennai - 600 021.

... Petitioners

Versus

State Rep.by Sub-Inspector of Police,

H-1, Washermanpet Police Station,

Chennai (Crime No.171 of 2020)

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in Crime No.171 of 2020 on the file of the Respondent police and quash the same.

For Petitioners: Mr.A.Raja Mohamed

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

The petitioners, who are second and third accused in Crime No.171 of 2020 for offences under Sections 143, 145, 147, 290 of the Indian Penal Code, 1860, 41, 71A(1) of the Tamil Nadu City Police Act, 1888 and 4B of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959, have filed quash petition.



2.The case of the prosecution is that without getting permission of Commissioner of Police, Chennai and knowing very well that under Section 41 prohibitory order issued not to conduct any illegal meeting, procession, fasting, demonstration and human-chain, the petitioners and some others assembled together, raising slogans and protested against the Citizenship Amendment Act enacted by the Central Government, thereby caused nuisance to the public and transportation services. At that time, the respondent asked them to disperse from the said place. But they failed to obey the order, they gathered many more people in that place through the vehicle Tata Ace bearing registration number TN-11-C-7287, they brought food and water bottles for the protestors by more than 10 vehicles. Hence, the respondent registered a case in Crime No.171 of 202 for offences under Sections 143, 145, 147, 290 IPC, (6), 71(A)(i) TNCP Act & 4-B r/w 4A(1a) of Tamil Nadu Open Place Disfigurement Act 1959.

3.The contention of the learned counsel for the petitioners is that the petitioners are social activists, who raise their voice for public cause and public welfare, whenever there seems to be injustice. They are law abiding citizens. The allegations in the FIR neither has any criminal force nor reveals any specific role of these petitioners. The Hon'ble Supreme Court of India held that the right to freely assemble and also right to freely express one's view are 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. It is the duty of the Government to protect the right to freedom of speech that is so essential to a democracy. However, when there lot of members participated in the protest, the respondent police filed a FIR under Sections 143, 145, 147, 290 IPC, 1860 and Sec.4(6), 71(A)(i) of TNCP Act and Sec. 4-B r/w 4A (1a) of TNOPD Act 1959 as against the petitioners.

4. He further submitted that demonstration is not against law and it was conducted as per the provisions of law and no hindrance occurred to the transportation services as mentioned in the FIR. The respondent with a malafide intention has falsely implicated the petitioners in this case. In respect of the same issue, The Hon'ble Maduri Bench of Madras High Court quashed more than 100 FIRs and in one of its order dated 05.11.2020 in CrI.O.P.(MD) No.12448 of 2020, Henri Tiphangne Vs. The Sub Inspector of Police and Another, while quashing the FIR and observed as follows:

"Though there are prima facie materials to justify the registration of the First Information Report, I am of the view that its continuance is not warranted. This is because



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no untoward incident had taken place. The country had witnessed protests all over by different sections of people against the said amendments. Since the protest was peaceful and even the First Information Report does not disclose any act of violence or happening of untoward incident, I am of the view that the continued prosecution is not warranted. Quashing the same will secure the ends of justice.

5.As far as Section 143 IPC is concerned, the concerned police officer has to quote Section.30(2) of the Police Act instead of Section 143 IPC. However, the respondent straight away proceeded to register the FIR under Section 143 IPC for mere violation of so-called promulgation under Section 30(2) of the Police Act. It will not make out an offence under Section 143 IPC by straight away declaring an assembly of persons to be an unlawful assembly. As earlier held by the Hon'ble Court in the case of Jeevanandham & others vide order dated 20.09.2018 issued guidelines with regard to the registration of the FIR by the police that the assembly of persons were made to express dissatisfaction of the governance and claiming for their minimum rights that are guaranteed to an ordinary citizen. If such an assembly of persons are to be trifled by registering a FIR under Section 143 IPC and filing a final report for the very same offence, no democratic dissent can ever be shown by the citizens and such prohibition will amount to violation of fundamental rights guaranteed under the Constitution. None of the provisions of Section 143 of the Act would get attracted to the case on hand. Further, unlawful assembly means any assembly with weapons, but in this case nowhere mentioned in the FIR that the petitioners carried weapons. As far as Section 145 IPC is concerned, it is the continuance in the unlawful assembly and thus an aggravated offence Section 145 can be invoked only when Section 143 is applicable. As detailed above when Section 143 cannot be attracted then Section 145 also becomes abortive. As far as Section 147 IPC concerned, it can be invoked when there exists any riots. This section prescribes the punishment for the offence of rioting as defined in Section 146 IPC. The law clearly states that the presence of any person at the place of incident does not mean that he formed an unlawful assembly. If force or violence was applied, then only Section 147 would come into play, but in this case, it is nowhere stated in the FIR that any force or violence took place. Further, a person would be guilty of rioting only when he is a member of an unlawful assembly, the common object of which is to commit some offence. When Section 143 and 146 are not attracted then invoking of Section 147 is void ab initio and is wholly misconceived. The



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Hon'ble Apex Court in Maiku V. State of Uttar Pradesh has observed the following:

"The object was either to recover the dead body of S or to recover the stolen property of P. This object apparently could not be said to be an unlawful object and therefore these appellants could not be convicted under Section 147. The High Court appears to have ignored this aspect of the matter. It is also clear that if these appellants could not be convicted for an offence under Section 147, they also could not be convicted under any section of the Penal Code with the aid of Section 149. The conviction of these appellants under Section 147 and with the aid of section 149 could not therefore, be sustained."

So far as the offence under Section 290 IPC, it is defined that there must be a public nuisance. What it speaks is a person is guilty of a public nuisance provided he does any act or is guilty of an illegal omission, which causes any common injury, danger or annoyance to the public or to the people in general, who dwell or occupy property in the vicinity, or which must necessarily cause injury, objection, danger or annoyance to persons who may have occasion to use any such public right. There is no public nuisance in this case. In order to bring home a charge for offence under Section 290 IPC, it is incumbent upon the prosecution to prove that the accused is guilty of some culpable act or omission causing injuries, danger or annoyance. 'Public nuisance' or 'common nuisance' as defined in Section 268 IPC is an offence against the public either by doing a thing which tends to the annoyance of the whole community in general or by neglecting to do anything which the common good requires. Section 290 IPC prima facie has no application from a reading of the FIR.

6. As far as Section 41(vi) of Police Act is concerned, the power conferred on the Commissioner under Section 41 of the Madras City Police Act is sweeping and that power is meant to be exercised with great care and caution. The Madras City Police Act is a pre-Constitution enactment and the powers conferred on the authorities at a time when the country was under the colonial regime and during the period when suppression of dissent was considered to be a legitimate policy of the State, cannot be exercised after the enactment of the Constitution in the same manner, as it was exercised earlier. This Court in W.P.No.2817 of 2014 M.Durairaj Vs. The Superintendent of Police, in its order dated 05.02.2014 observed the following:



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"The Intelligent Report placed before the Court shows that the police still have the attitude which does not seem to recognize that the country is a democratic nation, where every citizen has a right to full and equal participation in the process of Government. No citizen can be regarded as an enemy of the State merely because he has voiced a view which is not the one favoured by those in authority. The fact that the police are vested with power should not make them assume that, that power is available for exercise in any manner that they consider fit. That power is to be exercised strictly within the ambit of the provisions of the Constitution, more particularly, the requirement that any restriction placed on the exercise of fundamental rights should be a reasonable restriction and the restrictions so placed should be shown to be essential, having regard to the permissible purpose for which restrictions may be imposed. The authorities ought not to have refused permission mechanically, they should be in a position to satisfy the Court that such refusal falls strictly within the ambit of the permissible grounds for restricting the exercise of fundamental rights under Article 19 of the Constitution. A mere apprehension that some disturbance may be caused in the meeting place would not be sufficient. Under Section 41 of the Madras City Police Act, the police have power to depute one or more police officers to be present at the meeting. If, at the meeting, such police officers were to find that anything illegal was being done, it would be open to them to take such further action as may be considered necessary in the circumstances. A blanket order refusing to permit the meeting to be held is not the method of relating the exercise of fundamental rights of freedom of speech, expression and assembly".

7. The respondent included offences against the petitioners under Section 4(6) and 4-B r/w 4A (1a) of TNOPD Act 1959 without any ingredients as prescribed under the Tamil Nadu Open Places (Prevention of Disfigurements) Act, 1959 and as far as offence under Section 71(A)(i) of TNCP Act is concerned, there is no evidence to prove that the petitioners have committed any such offence. When thousands of people had gathered in the protest,



implicating the petitioners alone is illegal, biased and against the law of the land. Hence, all the offences framed against the petitioners are liable to be quashed.

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8. The learned Additional Public Prosecutor submits that on 27.02.2020 the petitioners and others without any prior permission to protest against the Citizenship Amendment Act enacted by the Central Government of India, held protest, caused nuisance to the public, disrupted transport services and disobeyed the prohibitory orders passed by the police officers. The petitioners and others refused to disperse and on the other hand, they raised slogans and caused disturbance to the public. The petitioners and others without obtaining permission from the authorities concerned have formed themselves into an unlawful assembly restrained others and caused public nuisance and disturbance.

9. Considering the rival submissions and on perusal of the materials, it is an 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 petitioners. Hence, this Court finds that the petitioners and others only raised slogans and shown protest against the Citizenship Amendment Act enacted by the Central Government of India. Raising slogans against the Government itself 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.

10. 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.171 of 2020 on the file of the respondent is hereby quashed. This criminal original petition is allowed accordingly. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar



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To

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1.The Sub-Inspector of Police,
H-1, Washermanpet Police Station,
Chennai (Crime No.171 of 2020)

2.The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.16416 of 2021
and
Crl.M.P.No.8946 of 2021

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srg 16/11/2021