

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.12.2021

CORAM :

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.20336 of 2020

1.Moorthy
2.Lenin
3.U.Vignesh
4.Logu
5.Durairaj
6.Chitrarasu
7.Jeeva
8.Pasuvalingam
9.Kalamegam
10.Naresh

...Petitioners

Versus

State Rep by,
The Inspector of Police,
E-1, Ponneri Police Station,
Ponneri, Tiruvallur District.
Crime No.3060/2020.

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records against Crime No.3060/2020, dated 01.10.2020 on the file of the respondent Police and quash the same.

For Petitioners : Mr.S.K.Bharathi

For Respondent : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

The petitioners, who are accused in Crime No.3060 of 2020, on the file of the respondent Police, has filed this Quash Petition.

2.The gist of the case is that on 01.10.2020, when the Police personnels attached to the respondent Police were on patrol duty, near Ambedkar Statue at Ponneri, the petitioners unlawfully assembled without any prior permission from the authorities concerned and raised slogans against the Central

Government and Government of Uttar Pradesh for brutally murdering a dalit girl. When the respondent Police intervened and insisted them to disperse, the petitioner failed to do so. Hence, they were arrested and FIR in Crime No.3060 of 2020 was registered against them, for offence under Sections 143 188 and 269 IPC.

3.The learned counsel for the petitioner submitted that the petitioners shown their protest in a democratic manner which is a right guaranteed under the Constitution of India. The petitioners along with others held protest in the corner of the road. It is not the case that the petitioners and others blocked the free movement of traffic and caused any inconvenience to the general public. The learned counsel further 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 Crl.O.P.Nos.23129 & 23127 of 2019" on the similar grounds, quashed the investigation 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 Crl. 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. Right to Dissent is the Hallmark of Democracy, the petitioners only expressed their displeasure which is their fundamental right. Hence, he prayed for quashing of the investigation against the petitioners.

4.The learned Additional Public Prosecutor appearing for the respondent Police submitted that when the Sub Inspector of Police attached to the respondent Police Station along with other Police were on patrol duty, the petitioners unlawfully assembled without any permission near Ambedkar Statue at Ponneri and started raising slogans against the Central Government and Government of Uttar Pradesh for brutally murdering a dalit girl. When they were asked to disperse, they failed to do so. Hence, the respondent Police has registered a case against the petitioners. Only during investigation, the contention of the learned counsel for the petitioners are to be decided and hence, he prayed for dismissal of this petition.

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

6.Considering the rival submissions and on perusal of the materials, this Court finds that the petitioners have only raised their objection in a democratic manner which is a right guaranteed under the Constitution of India. Raising slogans against the Government itself would not amount to any commission of offence, which is a fundamental right under Constitution of India. 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 FIR against the accused/protesters on the similar ground.

7.In view of the above, the FIR in Crime No.3060 of 2020, on the file of the respondent Police, is hereby quashed against the petitioners and other accused, who are similarly placed. Accordingly, this Criminal Original Petition is allowed.

Sd/-

Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

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To

1.The Inspector of Police,
E-1, Ponneri Police Station,
Ponneri, Tiruvallur District.
(Crime No.3060/2020)

2.The Public Prosecutor,
High Court, Madras.

CRL.O.P.No.20336 of 2021

KSM(CO)
RVM(10/01/2022)