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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.17903 of 2021

and

Crl.M.P.Nos.9843 & 9845 of 2021

1.Mohamed Rabik
2.Harish
3.Saiyathu Ibrahim
4.Kamarudeen
5.Abdhl Kathar (Vadai Kathar)
6.Abuthageer
7.Abdul Hamithu
8.Anwar Hussain

... Petitioners

Versus

1. State Rep.by its
The Inspector of Police,
Selvapuram Police Station,
Coimbatore. (Cr.No.193/2020)

2.Chinnadurai.R.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.1527/2020 pending on the file of the Judicial Magistrate Court - V, Coimbatore and quash the same as illegal and without jurisdiction.

For Petitioners: Mr.I.Abdul Basith

For Respondent : Mr.A.Damodaran
Additional Public Prosecutor

ORDER

The petitioners, who are accused in C.C.No.1527 of 2020 for offences under Sections 143 & 341 IPC, have filed the Quash Petition.

2.The case of the prosecution is that on 18.02.2020 at 5.00 hours Ramamoorthy Road, near Keerthi Store, on behalf of SDPI Party and in the presence of the petitioners, 500 people were illegally assembled and protested in the public road and disturbed the public without any prior permission against the implementation of the Citizenship Amendment Act and further,



demanded the central government to withdraw the CAA, NRC and NPR with raising slogans against the State and Central Government. Hence, FIR has been registered in Cr.No.193 of 2020 for the offences under Sections 143 and 341 IPC.

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3.The contention of the learned counsel for the petitioners is that the registration of FIR in Crime No.193 of 2020 for the offences under Sections 143 and 341 IPC, is illegal, arbitrary and abuse of process of law. He further submitted that the respondent initiated a suo-moto criminal prosecution against these petitioners on the allegation that the petitioners illegally assembled and protested in the public road without any prior permission against the implementation of the Citizenship Amendment Act and further demanded the central government to withdraw the Citizenship Amendment Act. Further, the said FIR neither reveals any specific role of the petitioners nor attracts any offence punishable under Sections 143 and 341 of IPC against these petitioners. On the contrary, the impugned criminal prosecution is in violation of these petitioners' fundamental rights guaranteed under Article 14, 19, 20(1) and 21 of Indian Constitution.

4.The learned counsel for the petitioners submitted that the trial Court failed to apply his mind and acted mechanically by accepting the charge sheet, when the FIR in Cr.No.193 of 2020 by the respondent police itself registered with intent to prohibit the fundamental right to freedom to assemble peaceably and without arms and same amounts to curtailing the dissent voices of the citizens is clearly in violation of the the fundamental rights guaranteed under Article 14, 19(1)(a) and 21 of the Constitution of India and also to the dictum laid down by the Hon'ble Supreme Court of India in "Himatlal K.Shah Versus Police Commissioner, Ahemdabad", wherein it is held that

"..... State cannot by law abridge or take away the right of assembly by prohibition assembly on every public street or public place. The State can only make regulations in aid of the right of assembly of each citizen and can only impose reasonable restrictions in the interest of public order."

Further, he relied upon the decisions of this Hon'ble Supreme Court in State of Haryana and others V.Bhajan Lal and others reported in 1992 SCC (Cr1) 426, it is squarely applied to the petitioners' case. Further, he submitted that the plain reading of the FIR, impugned charge sheet and 161 statement of the witnesses in support of the prosecution is absurd, improbable and self inconsistent and the same neither reveals any specific allegation nor role against the petitioners nor any offence



against them as charged in the impugned charge sheet. The same is evident from the vague and omni bus charges against the petitioners in the impugned charge sheet, which is supported by parrot like 161 statements of the witnesses. It is also pertinent to state that the Hon'ble Supreme Court has emphasized on the care and scrutiny that must be bestowed by a Magistrate while scrutinizing the final report and the accompanying materials. In PEPSI FOODS VS. SPECIAL MAGISTRATE & ORS (1998 SCC (Cri)1400), the Court said

" 28.Summoning of an accused in a criminal case is a serious matter. Criminal law cannot be set into motion as a matter of course. It is not that the complainant has to bring only two witnesses to support his allegations in the complaint to have the criminal law set into motion. The order of the Magistrate summoning the accused must reflect that he has applied his mind to the facts of the case and the law applicable thereto. He has to examine the nature of allegations made in the complaint and the evidence both oral and documentary in support thereof and would that be sufficient for the complainant to succeed in bringin charge home to the accused. It is not that the Magistrate is a silent spectator at the time of recording of preliminary evidence before summoning of the accused. The Magistrate has to carefully scrutinize the evidence brought on record and may even himself put questions to the complainant and his witnesses to elicit answers to find out the truthfulness of the allegations or otherwise and then examine if any offence is prima facie committed by all or any of the accused."

5.Further, the learned counsel for the petitioners submitted that the impugned charge sheet neither reveals any criminal force nor any mischief or trespass and failed to satisfy the requirement of section 141 of IPC and the same will not attract offence under Section 143 IPC and the impugned charge sheet and FIR is so absurd and vague and failed to satisfy the basic ingredient to attract offence under Section 341 of IPC, who was obstructed by this petitioners and how he was obstructed and how such person was prevented by the petitioners from proceedings.

6.The learned Additional Public Prosecutor submits that on 18.02.2020, 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.

7. 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, which is a fundamental right under Constitution of India.

8. 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.193 of 2020 on the file of the respondent is hereby quashed. This criminal original petition is allowed accordingly. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

sms

To

1. The Judicial Magistrate Court - V,
Coimbatore.
2. State Rep.by its
The Inspector of Police,
Selvapuram Police Station,
Coimbatore. (Cr.No.193/2020)



3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.I.Abdul Basith, Advocate, S.R.No.53109

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and
CrI.M.P.Nos.9843 & 9845 of 2021

NRL (CO)
CT 02/12/2021