



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.18157 of 2021

&

Cr1.M.P.No.9984 of 2021

1.Abuthahir

2.Ashraf

3.Mohamed Nikash

4.Jameel Harish

5.Faizal

6.Syed Irsath

... Petitioners/ Petitioners

Versus

State rep. by its
The Sub-Inspector of Police,
Ukkadam Police Station,
Coimbatore.
(Cr.No.577/2020)

... Respondent/ Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to Cr.No.577 of 2020 on the files of the respondent herein and quash the same as illegal.

For Petitioners: Mr.I.Abdul Basith.

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

ORDER

This Criminal Original Petition has been filed to quash the case in Crime No.577 of 2020 on the file of the respondent police.

2. The case of the prosecution is that on 03.06.2020, at about 12.00 p.m., during the patrol, in front of Valliammai Bakery, at Ukkadam NH Road under the leadership of first petitioner herein, the other petitioners, without any prior permission, held protest against the arrest of students, who were conducted protest in Delhi against CAA & NRC and thereby caused nuisance to the public. The defacto complainant warned



the protesters that the prohibitory order under Section 144 of Cr.P.C., is in force and also explained, the danger of spreading of COVID-19 pandemic and asked them to disperse. Since they failed to obey the order, the respondent arrested the petitioners and registered a case in Crime No.577 of 2020 for the offences punishable under Sections 143, 188, 269 of IPC, 3 of Epidemic Diseases Act and Sec.134 of Tamil Nadu Public Health Act.

3. The learned counsel appearing for the petitioners submitted that the petitioners are social activist and they are law abiding citizen and they have been maliciously roped into the above case. 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 had never involved in any unlawful assembly. Therefore, he sought for quashing the proceeding.

4. In support of his submissions, the learned counsel for the petitioners 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 CrI 606.

5. Per contra, the learned Additional Public Prosecutor submitted that on 03.06.2020 the petitioners assembled in front of the Valliammai Bakery at Kovai Ukkadam NH Road against the arrest of the students, who were participating in the Anti-CAA, NRC Protest, 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 petitioners 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 petitioners 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 petitioners refused to disperse, on the other hand, they raised slogans and caused disturbance to the public. Therefore, he vehemently opposed the quash petition



and prayed for dismissal of the same.

6. Heard learned counsel for the petitioners and the learned Additional Public Prosecutor appearing for the respondent.

7. Considering the rival submissions and on perusal of the materials, it is admitted fact that the petitioners 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 have only raised slogans and shown protest against arrest of the students.

8. Admittedly in this case, the occurrence 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 petitioners. 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. Further, the complaint does not even state as to how the protest formed by the petitioners and others is an unlawful protest and does not satisfy the requirements of Section 143 of IPC. Therefore, the final report cannot be sustained and it is liable to be quashed.

9. In the result, this Criminal Original Petition is allowed and the proceedings in Crime No.577 of 2020 on the file of the respondent police is hereby quashed. Consequently, the connected Criminal Miscellaneous Petition is closed. .

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

mrp/mdl



To

1. The Sub-Inspector of Police,
Ukkadam Police Station,
Coimbatore.

2. The Public Prosecutor,
High Court, Madras.

+lcc to M/s.I.Abdul Basith, Advocate, S.R.No.54190

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&

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KSM(CO)
SB(13/12/2021)