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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.12.2021

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.23370 of 2021

and

Cr1.M.P.Nos.12803 & 12804 of 2021

1.S.Muthusamy
2.Ramu @ Ramachandran
3.V.S.Duraisamy
4.K.Lakshmi
5.P.Kathiravan
6.B.Sulthan
7.M.Balan
8.R.Subramani

... Petitioners

Versus

State rep.by
The Inspector of Police
Erode Town Police Station
Crime No.977 of 2020
Erode District.

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the criminal case in STC.No.309 of 2021 on the file of the Ld.Judicial Magistrate No.2, Erode and quash the same by allowing this Criminal Original Petition.

For Petitioners : Mr.N.Manoharan

For Respondent : Mr.Raj Thilak
Additional Public Prosecutor

O R D E R

This petition has been filed to call for the records relating to the criminal case in STC.No.309 of 2021 on the file of the Ld.Judicial Magistrate No.2, Erode and quash the same by allowing this Criminal Original Petition.



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2. The petitioners/accused Nos.1, 2, 4, 5, 7 to 10 in STC.No.309 of 2021, for the offence under Sections 143, 269, 270 IPC r/w Section 51 (b) of the Disaster Management Act, 2005, have filed this petition.

3. The gist of the complaint is that on 01.12.2020, the respondent Police was on the routine patrol duty, in view of the lock down imposed due to Covid-19 pandemic situation and to implement the prohibitory order under Section 144 of Cr.P.C. passed by both the Central Government and State Government in curtailing and controlling the spread of Covid-19 pandemic. At about 13.25 hours, a group of persons assembled near Panneerselvam Park, Erode Town to garland the statue of their political leader Dr.Kalaignar, former Chief Minister of Tamil Nadu. They were not following the Standard procedure to avoid spread of virus. Hence, a case in Crime No.977 of 2020, for the offence under Sections 143, 269, 270 IPC r/w Section 51 (b) of the Disaster Management Act, 2005, came to be registered. Thereafter, on the same day, final report was made ready against 10 persons. The trial Court had taken the case on file on 05.01.2021 in STC.No.309 of 2021.

4. The contention of the petitioners is that none of the petitioners had gone near to the scene of occurrence as projected by the respondent. Further, the first petitioner belonging to the opposition political party, were extending help to the people who got affected during Covid-19 by distributing sanitizer, mask and others health related articles and food items. All were individually engaged in distribution of the articles. They did not gather together at any point of time, however, the good work done by the petitioners like distributing essential articles to many people, caused annoyance to the ruling party, and at their instance, a false complaint has been registered. He further submitted that in the First Information Report, as many as 10 persons have been arrayed as accused. It is the own admission of the Sub-Inspector of Police, who was informed and also who registered the First Information Report. The information recorded is that some persons have gathered to garland the statue, but by the time Police reached the scene of occurrence, no one was found there, while this being so, how can the names of 10 persons alone be registered in the First Information Report, for which, there is no answer. Further in this case, the alleged occurrence is said to have taken place on 01.12.2020, and on the same day, a final report has been filed. In such manner, investigation has been conducted. He further submitted that in this case there are three witnesses LW1 to LW3. LW1 and LW2 are the Head Constables, who were part of the patrol duty along with LW3, the Investigating Officer. The statement of all these witnesses is in the nature of hearsay,



which is inadmissible. Further, there is no material to show that a case is made out and there is no legal evidence available.

5. In support of his contention, he relied upon the decision of this Court which is fortified by the decision of the Hon'ble Supreme Court in STATE OF HARYANA AND OTHERS Vs. BHAJANLAL AND OTHERS 1992 Supp (1) Supreme Court Cases 335, wherein the Hon'ble Supreme Court has held that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection. This Court in Crl.O.P.(MD). Nos.13652 and 13855 of 2021 held that there cannot be prosecution without showing that the persons gathered are affected with the Covid-19, at the time of alleged occurrence so that they would cause further spread of virus.

6. The learned Additional Public Prosecutor submits that the respondent Police were working over time through out the day continuously during pandemic period. Hence, to avoid the spread of Covid-19, they were advising the public and also were implementing the Prohibitory Order under Section 144 of Cr.P.C. In this case, 10 named accused, gathered in public, without following the Standard Operating Procedure, without mask or sanitizers to save themselves, and to prevent the spread of virus. The petitioners assembled at Panneerselvam Park, Erode Town and raising slogan before garlanding the statue of their political leader Dr.Kalaaignar, former Chief Minister of Tamil Nadu. In order to strictly implement the Prohibitory Order and also for the welfare of the people, the respondent Police registered a case and filed a final report in this case after examining the witnesses LW1 to LW3. Hence, the learned Additional Public Prosecutor opposed this quash application.

7. Considering the rival submissions and on perusal of materials, it is seen that in this case, informant and the Investigating Officer are one and the same. In any event, in the First Information Report, it is recorded that the Listed Witnesses LW1 to LW3 had reached the scene of occurrence at Panneerselvam Park, Erode Town, after getting information that a group of persons have gathered and were raising slogan. Further, it is admitted that when the LW1 to LW3 had reached there, no one was available. The petitioners are prominent political persons belonging to opposition party and their names have been included in the First Information Report and thereafter, in the final report. Further, the learned counsel for the petitioners contended that the petitioners belonging to opposite political party were distributing mask, sanitizer and food articles to the public independently. While so, the petitioners gathering on 01.12.2020 to garland the statue of their political leader Dr.Kalaaignar, is without any reason. It



is a known fact that the celebration with regard to political leaders will be either on their birthday and or memorial day. The former Chief Minister's birthday falls on June 2nd and his memorial day falls on August 8th and none of these occasion falls in December. Further there is no material to show the petitioners herein were affected with the Covid-19, to apprehend the possibility of spread of disease.

8. As rightly contended by the petitioners this Court had held that merely going out without any intention without causing harm to law and order, would not amount to intention of spreading disease.

9. In view of the same and the controverted of the witnesses and materials would show that no case is made out against the petitioners. In view of the same, this Court is inclined to quash the proceedings in STC.No.309 of 2021 against all the accused.

10. With the above directions, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petitions are also closed.

Sd/-
Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

dna

To

1. The Judicial Magistrate No.II,
Erode.

2. The Inspector of Police
Erode Town Police Station
Crime No.977 of 2020
Erode District.

3. The Public Prosecutor
High Court, Madras.

+1cc to M/s.N.Manokaran, Advocate, S.R.No.63916

Crl.O.P.No.23370 of 2021
and Crl.M.P.Nos.12803 & 12804 of 2021

KSM(CO)
SU(20/01/2022)