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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 12.11.2021

CORAM:

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

CRL.O.P.No.20224 of 2017 and
CRL.M.P.Nos.12151 & 12152 of 2017

1. Susi Kalaiyarasan
2. S.S.Mujin
3. A.Muthu @ Muthuvalavan
4. K.C.Balan
5. M.Murugan
6. Balusamy
7. Ayyasamy
8. Duraisamy
9. Shanmugam
10. Mani @ Kittan
11. Palanisamy
12. A.Munusamy
13. Ludha @ Nilamanimarani
14. Kannagi
15. Selvi
16. Thulasimani
17. Sakunthala
18. Chitra
19. Marammal
20. Parvathi
21. Baba
22. Kavitha
23. Saraswathi
24. Velmani

...Petitioners/A1 to A24

Vs

1. The State of Tamil Nadu,
Rep. by the Inspector of Police,
B-4 Race Course Police Station,
Coimbatore,
Coimbatore District.
Cr.No.358 of 2015
2. K.Prema,
Sub Inspector of Police,
B-4 Race Course Police Station,



Coimbatore,
Coimbatore District.

...Respondents/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records in pursuant to S.T.C. No.132 of 2015 on the file of the Judicial Magistrate No.III, Coimbatore and quash the same.

For Petitioner : Mr.V.Chinnasamy

For Respondents: Mr.S.Vinoth Kumar
Government Advocate (Criminal Side)

ORDER

The above petition has been filed to quash the proceedings in S.T.C. No.132 of 2015 on the file of the Judicial Magistrate No.III, Coimbatore a for the offences under Sections 143 and 341 of IPC.

2. The allegation in the final report is that the accused belong to a political party. On 04.05.2015, the petitioners unlawfully assembled and made a protest against lodging of a complaint against a student. While doing so, the accused also restrained the public and squattered the public road. Thereby, they had committed the offences under Sections 143 and 341 of I.P.C. The prosecution cited 20 witnesses.

3. The learned counsel for the petitioner submitted that the prosecution has been launched with political motive and even when the entire prosecution case taken as proved, the same would not constitute any offence. Therefore, continuing the prosecution is nothing but abuse of process of law. Therefore, submitted that the same may be quashed.

4. The Learned Government Advocate (Criminal Side) submitted that the accused unlawfully assembled and caused disturbance to the public, thereby, they has been prosecuted.

5. It is to be noted that while exercising the power under Section 482, the Court should be slow, at the same time, if the Court finds that from the entire materials collected by the prosecution taken as a whole, would not constitute any offence, in such situation, directing the parties to undergo ordeal of trial will be a futile exercise and it will infringe the right of the persons and in this regard, the Apex Court in State of Haryana and others Vs. Bhajan Lal and Others reported in 1992 Supp (1) Supreme Court Cases 335, has been held as follows :

'.....



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(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155 (2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.'

6. It is also relevant to note the definition of Unlawful Assembly:

'Unlawful Assembly-



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An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is -

(i) to overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

(ii) to resist the execution of any law, or of any legal process; or

(iii) to commit any mischief or criminal trespass, or other offence; or

(iv) by means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

(v) by means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.'

7. Only when the assembly fit into any of the above circumstances, it could be construed as unlawful. The materials collected by the prosecution do not show that the accused had shown any criminal force to commit any mischief, crime or any offence or by way of criminal force or tried to take possession of the property or right to use of incorporeal right which is in possession of enjoyment of others or rights.

8. Similarly, it is not the case of the prosecution that the accused has assembled to commit any offence. Even to show that the accused has assembled to resist or execution of any law, there is no whisper whatsoever available in the First Information Report or in the other materials to show that there were promulgation or there were any prohibitory order existed at the relevant point of time. When the prosecution prima facie failed to establish that the assembly of five or more persons with a common object to commit any offence or any of the circumstances shown under Section 141, mere assembly of more than five persons cannot be construed that there is an unlawful assembly. Therefore, when the people gathered to show the protest in a democratic way, such a protest, in the absence of



any ingredients of offence under Section 141 cannot be construed as unlawful assembly.

9. Similarly to attract the offence under Section 341 there must be material evidence by the prosecution that there is wrongful restraint of any person by the accused. Though there is a general allegation that the accused squattered on the public road which caused obstruction to the general public, there is no specific statement available on record to show that how others are prevented by the accused or prevented them from proceeding in any direction. Therefore, without any specific material, to show that the petitioners committed any offence, mere general allegation that the public has suffered itself will not constitute any offence in the absence of any allegation made by any of the general public.

10. Considering the above, this Court is of the view that mere launching of final report by the prosecution itself is not sufficient to reach to the conclusion that offences are made out. The materials collected by the prosecution do not support for proving the case and continuing the prosecution on shaky or without any materials is clear abuse of process of law.

11. Accordingly, this Criminal Original Petition is allowed and proceedings against the petitioners in S.T.C.No.132 of 2015 on the file of the learned Judicial Magistrate No.III, Coimbatore is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

vrc/kbs

To

1. The Judicial Magistrate No.III,Coimbatore.
2. Do through the Chief Judicial Magistrate, Coimbatore District.
3. The Inspector of Police,
B-4 Race Course Police Station,
Coimbatore,Coimbatore District.
- 4.The Sub Inspector of Police,
B-4 Race Course Police Station,
Coimbatore,Coimbatore District.
- 5.The Public Prosecutor,High Court, Madras.

CRL.O.P.No.20224 of 2017
and CRL.M.P.Nos.12151 & 12152 of 2017

KG(CO)

A.SK(06.12.2021)