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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

CRL.O.P.No.23524 of 2021

Dr.V.Kalanidhi

... Petitioner

Versus

The State of Tamil Nadu,
Rep. by Inspector of Police,
Aminjikarai Police Station K-3,
Chennai.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the FIR in Crime No.491 of 2017 and the Final Report filed on 22.11.2021 in C.C.No.34 of 2021 in Crime No.491 of 2017 pending before the Additional Special Court for Trial of Criminal Cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu and quash the same.

For Petitioner : Mr.P.Wilson, Senior Counsel for
M/s.P.Wilson Associates

For Respondent : Mr.E.Raj Thilak, APP

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.34 of 2021, on the file of the Additional Special Court for Trial of Criminal Cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai.

2.The gist of the case is that on 13.03.2017, at about 10.00 a.m., the Sub Inspector of Police attached to the respondent Police Station along with the Police party were on duty near Aminjikarai, at that time, the petitioner/A3 along with 25 persons unlawfully assembled before the Fair Price Shop-052, Aminjikarai without any permission from the authorities



concerned and raised slogans against the Government. When the 2nd respondent intervened and insisted them to disperse, the petitioner and other accused failed to do so. Hence, a complaint was lodged and on completion of investigation charges sheet came to be filed before the learned Additional Special Court for Trial of Criminal Cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai against the petitioner/A3 and five other accused and the same was taken on file as C.C.No.34 of 2021.

3.The learned counsel for the petitioner submitted that in this case, except LW1 and LW2, other witnesses/LW3 to LW5 are public servants. The case of the prosecution is that the petitioner along with other accused assembled before the Fair Price Shop, which is a public place and made protest for not providing ration articles. It is highly improbable that no public witness was present in the place of occurrence and no reason has been given for non examination of public witnesses, except LW1 and LW2. In this case, the FIR in Crime No.491 of 2017 was registered for offence under Sections 143, 341 and 188 IPC. As per Section 188 IPC, only the public servant is authorized to lodge a complaint and Section 195 Cr.P.C is clear embargo as to how a complaint to be registered and investigated by the Police for offence under Section 188 IPC. In this case, there is no complaint from the public servant. Hence, the registration of the FIR its void ab initio and continuation of investigation for other offences is also not permitted.

4.The learned counsel for the petitioner further submitted that this Court in catena of judgments have clearly held that the Police personnels 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 CrI.O.P.Nos.23129 & 23127 of 2019" on the similar grounds, quashed the proceedings 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 CrI. 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.

5.The learned counsel for the petitioner further submitted that the petitioner and other accused raised slogans and held demonstration against the Government for the ineffectiveness in distribution of ration articles, which cannot be construed as unlawful act. Right to Dissent is the Hallmark of Democracy, the petitioner and other accused only expressed their



6. The learned Additional Public Prosecutor appearing for the respondent submitted that in this case, a complaint was lodged by the respondent Police. When he was on patrol duty along with other Police personnels, the petitioner/A3 and others had assembled and raised slogans against the Government and also caused disturbance to the public. Timely intervention of the respondent Police, further law and problem was averted. The petitioner and other accused without getting permission from the authorities concerned have formed themselves into unlawful assembly, restrained the others and caused public disturbance. On completion of investigation, charge sheet has been filed in this case.

8. From the statement of the witnesses, it is seen that LW1 to LW5 present in the scene of occurrence and according to them, the petitioner and other accused raised slogans against the Government with regard to shortage of non supply of ration articles, other than that they did nothing. Admittedly in this case, the occurrence had taken place in the public place, except LW1 and LW2 no public or independent witnesses 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 CrI. 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 petitioner and other accused. 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 proceedings against the accused/protesters on the similar ground.

<https://hcservices.ecourts.gov.in/hcservices/>



the file of the Additional Special Court for Trial of Criminal Cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai is hereby quashed against the petitioner and other accused. This Criminal Original Petition is allowed, accordingly.

Sd/-
Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

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To

1. The Additional Special Court for Trial of Criminal Cases related to Elected Members of Parliament and Members of Legislative Assembly of Tamil Nadu, Chennai.
2. The Inspector of Police,
Aminjikarai Police Station K-3,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

+2ccs to M/s.R.Wilson Associates, Advocate, S.R.No.63955

CRL.O.P.No.23524 of 2021

GSM(CO)
SU(13/12/2021)