



IN THE HIGH COURT OF JUDICATURE AT MADRAS

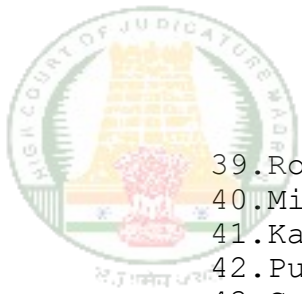
DATED: 08.11.2021

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Crl.O.P.No.12978 of 2017
and Crl.M.P.No.8440 of 2017

1. Viswalingasamy
2. Mahesh Kumar
3. Ragupathi
4. Karuppusamy
5. Kannan
6. Mahesh
7. Chandrasekar
8. Murugasamy
9. Manthiri
10. Vasanth
11. Soorya
12. Kuppusamy
13. Gowthaman
14. Theenadhayalan
15. Ramasamy
16. Sethuraman
17. Ravikumar
18. Nachimuthu
19. Chandrasekar
20. Sampath Kumar
21. Karunanithi
22. Thirumoorthi
23. Sivasamy
24. Krishnakumar
25. Senthilkumar
26. Ayyasamy
27. Kuppusamy
28. Thangaraj
29. Jeganathan
30. Suresh
31. Rajendran
32. Mahesh
33. Gnanasundar
34. Davit
35. Sasi @ Kailashamoorthi
36. Albert
37. Arun
38. Karthik



39.Robert
40.Michel
41.Kalai Selvi
42.Pushpa
43.Gandhimathi
44.Thangaselvi
45.Gomathi
46.Sairabanu
47.Eswari
48.Mani
49.Amsaveni
50.Rajeshwari
51.Kanagammal
52.Sangeetha
53.Maheshwari
54.Chitra
55.Rukmani

.. Petitioners

Vs.

1. The Inspector of Police,
Uthukuli Police Station,
Tirupur,
(Crime No.164/2017)

2.Rajaprakash

.. Respondents

Prayer :

This Criminal Original Petition filed under Section 482 of Cr.P.C. to quash the charge-sheet filed against the petitioners in P.R.C.No.1/2017 on the file of the Judicial Magistrate Court, Avinashi, Tirupur District.

For Petitioner : Mr.P.M.Duraisamy

For Respondents : Mr.S.Vinoth Kumar for
Public Prosecutor for R1
No appearance for R2.

ORDER

This criminal original petition has been filed to quash the charge-sheet filed against the petitioners in P.R.C.No.1/2017 on the file of the Judicial Magistrate Court, Avinashi, Tirupur District.

2. Heard, the learned counsel for the petitioner and the learned Public Prosecutor appearing on behalf of the first



respondent.

3. Learned counsel for the petitioner submitted that false case has been registered against the petitioners herein by the 1st respondent Police based on the complaint given by the defacto complainant alleging that they formed an unlawful assembly armed with stones and sticks in front of the wine shop and attacked a shed attached to the wine shop and pulled down the asbestos sheets. It is further alleged that the properties belonging to the bar attached to the wine shop were also damaged stated to be worth a total sum of Rs.2,00,000/-. On receipt of the complaint from the 2nd respondent herein at about 01.30 p.m. on 26.04.2017, the first respondent Police registered a case against the petitioners for the offences punishable under Sections 143,147,148,341,283,448 and 188 of IPC and Section 3 of Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992, against which the present Quash Petition is filed.

4. The learned counsel appearing for the 1st respondent Police submitted that in this case, the complaint has been lodged by the 2nd respondent, stating that a protest had been held by the petitioners against the prohibitory order passed by the Inspector of Police, Uthukuli Women Police Station. He further submitted that the petitioners were not granted any permission to hold protest and hence, the complaint came to be registered and investigation is in progress.

5.This Court considered the rival submissions and perused the materials available on record.

6. In State of Haryana - Vs - Bhajan Lal (1992 Supp (1) SCC 335), the Hon'ble Supreme Court has expounded the circumstances and the situations in which the inherent power u/s 482 should be invoked for quashment and for better appreciation, the relevant portion is extracted hereunder :-

"In the exercise of the extra-ordinary power under Article 226 or the inherent powers under Section 482 of the Code of Criminal Procedure, the following categories of cases are given by way of illustration wherein such power could be exercised either to prevent abuse of the process of any Court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guide myriad kinds of cases wherein such power should be exercised:



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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



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instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence and this case does not call for the exercise of extraordinary or inherent powers of the High Court to quash the F.I.R. Itself."

7. In yet another case in R.P.Kapur - Vs - State of Punjab (AIR 1960 SC 866), the parameters within which the exercise of inherent powers vested by Section 561-A of the repealed Code of Criminal Procedure, 1898 (corresponding to Section 482 Cr.P.C.) can be invoked had been laid down in the following terms:-

"(i) Where institution/continuance of criminal proceedings against an accused may amount to the abuse of the process of the court or that the quashing of the impugned proceedings would secure the ends of justice;

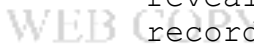
(ii) where it manifestly appears that there is a legal bar against the institution or continuance of the said proceeding, e.g., want of sanction;

(iii) where the allegations in the first information report or the complaint taken at their face value and accepted in their entirety, do not constitute the offence alleged; and

(iv) where the allegations constitute an offence alleged but there is either no legal evidence adduced or evidence adduced clearly or manifestly fails to prove the charge."

8. From the above, it is amply evident that this Court is clothed with the requisite power to interfere with the proceeding at any stage, provided, the necessary satisfactions, as enumerated above, are fulfilled. Therefore, the test that is required to be made is whether the materials placed on record by the prosecution fulfills the test for the continuance of the case or falls short for its quashment is the sole question that requires consideration.

9. This Court is not averse to the invocation of its powers u/s 482 of Cr.P.C., but the only limitation being that the tests as adumbrated by the Hon'ble Supreme Court in the



10. On perusal of the materials available on record reveals that statements from very many witnesses have been recorded by the respondent. However, it is to be pointed out that the evidentiary value of the said statements cannot be gone into at this stage.

12. The Court can refrain from exercising its power if a prima facie case is shown by the respondent that the petitioners have resorted to vandalism and that they have committed offence by unlawfully joining together. However, it is to be pointed out that the petitioners had applied for permission to hold a protest between 11.00 a.m. to 01.00 p.m. on 26.04.2017, which has been rejected by the Inspect of Police vide order dated 25.04.2017. Despite the said order, the accused assembled for protest and the allegation is that they damaged the properties of the bar attached to the wine shop in the locality.

14. Further, the fact remains that a perusal of the statement of P.W.16 vis-a-vis, the statement of other witnesses show that except for a general allegation of vandalism, there is no pointed allegation against any of the individual against whom



FIR has been registered that they have indulged in vandalising the shops in the locality. General allegation of the witnesses cannot be fastened against the petitioners, when there is no pointed allegation that it is only the petitioners, who have committed the act of damaging the property and created a panic situation in the locality. Further, the materials available on record reveal that the FIR has also been filed belatedly and no reason has been placed in support of the delay. Though the said delay cannot be a matter to be gone into at the present point of time, however, coupled with the facts as noted above, the belated filing of the FIR can definitely be an attendant circumstance to quash the complaint.

15. India, being a democratic country, all its citizens have a right to protest in a peaceful manner. Mere gathering at a particular place for protesting against a wrongful act cannot be given the colour of criminality, more so when the protest was against the closure of the liquor shop, which was endangering the lives of the citizens and putting the families of the persons gathered over there in peril.

16. Further, it is the case of the prosecution that properties such as chairs, tables, T.V.sets, CCTV cameras, advertisement board, tube lights etc., placed in the bar were damaged. However, there is no material available on record to show that the petitioners herein are the persons, who had committed the offence. Merely because the petitioners have partaken in the protest, the said protest cannot be put against them to implicate them in the damage caused to the bar. Staging a protest in a democratic manner cannot be construed to be an offence and if such a finding is rendered, not only the democratic right of the citizens would be robbed, but democracy, which is the backbone of our Constitution would be put to great jeopardy.

17. In view of the above, this Court is of the view that continuation of the prosecution against the 56 accused, persons, which includes women folk, cannot be allowed to continue, as allowing the same to continue would be nothing but travesty of justice against the petitioners and making a mockery of the constitutional guarantees available to the citizens of this country.

18. For the reasons aforesaid, following the ratio laid down in Bhajan Lal's case and R.P.Kapur's case (supra), this Court, in exercise of its inherent power under Section 482 of Cr.P.C., is inclined to quash the charge sheet. Accordingly, the charge-sheet filed against the petitioners in P.R.C.No.1/2017 on the file of the Judicial Magistrate Court, Avinashi, Tirupur District, is quashed and this criminal



original petition is allowed. Consequently connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar(CS V)

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Sub Assistant Registrar

msv

To

1. The Judicial Magistrate
Avinashi, Tirupur District.
2. The Inspector of Police,
Uthukuli Police Station,
Tirupur.
3. The Public Prosecutor
Madras High Court
Chennai

+1cc to Mr.P.M.Duraisamy, Advocate, S.R.No.57337

Crl.O.P.No.12978 of 2017
and Crl.M.P.No.8440 of 2017

KSM(CO)
CT 07/12/2021