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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.01.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.1181 of 2022
and
CrI.M.P.Nos.442 & 443 of 2022

1.Vaiko
2.Mallai C.A.Sathya
3.S.Jeevan

...Petitioners

Vs.

1. State by. its,
The Inspector of Police (Law and Order),
B1 North Beach Police Station,
Chennai. (Crime No.1120/2017).

2. Madasamy,
The Inspector of Police,
B1 North Police Station,
Chennai.

...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the case in C.C.No.15 of 2020 on the file of the Assistant Sessions Judge, Additional Special Court for Trial of Criminal Cases Related to Elected M.P's and M.L.A's of Tamil Nadu, Chennai and quash the same.

For Petitioners: Mr.R.Priyakumar

For R1 : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.15 of 2020, on the file of the Assistant Sessions Judge, Additional Special Court for Trial of Criminal Cases Related to Elected M.P's and M.L.A's of Tamil Nadu, Chennai.

2.The gist of the case is that on 10.08.2017, at about 11.30 a.m., the petitioners along with others, who belong to MDMK



Political party held protest at Narayanappan Street, North Beach, Chennai against NEET exam. On receiving information, the 2nd respondent Police, the Inspector of Police along with other Police personnels had gone to the scene of occurrence and asked the protesters to disperse, but they refused to do so and caused disturbance to the public and free movement of vehicles. Further, the protesters attempt to burn effigy, hence, the 1st respondent Police arrested and took them to marriage hall, since there was several persons. An FIR in Crime No.1120 of 2017 was registered, for offence under Sections 147, 285 and 290 IPC, after conclusion of investigation, charge sheet was filed before the Court and the same was taken on file as C.C.No.15 of 2020, listing nine witnesses as LW1 to LW9.

3.The learned counsel for the petitioners submitted that the offence under Section 147 IPC is not made out, since there was use of fire during protest. Holding a protest cannot automatically be termed as unlawful assembly. The protest is a accepted one in the democratic state. He further submitted that during the protest, there have been no disturbance to public and free movement of vehicles. During investigation, none of the public witness was examined by the 1st respondent Police in this case. To attract the offence under Section 285 IPC, any material to show there was usage of fire during protest. From the Observation Mahazar and Rough Sketch, there is no mention of usage of fire or any combustible material or traces of any burnt effigy. The offence under Section 290 IPC is also not attracted in this case, since there is nothing to show any nuisance to the public and no witness was examined to that effect. Thus, the petitioner and the other accused are falsely implicated in this case for political reason as a political vendetta. The protest was held to remind the in action of the Government with regard to NEET exam.

4.He further submitted that in this case, LW1 to LW6, LW9 are all Police personnels attached to the 1st respondent Police Station. LW7 and LW8 are vendors in that local area, who were shown as witnesses for Observation Mahazar and Rough Sketch. In this case, LW9 is the complainant as well as the Investigating Officer. The complainant and the investigating officer should not be one and the same person, unless in exceptional cases, where there is no prejudice caused to the accused. In this case, the prejudice against the accused is very much there, since the witnesses examined are all Police personnels. In support of this point, the learned counsel for the petitioner relied on the decision of the Hon'ble Apex Court in the case of "Varinder Kumar Versus State of Himachal Pradesh reported in (2020) 3 SCC 321."

5.Further, he placed reliance on the case of "Jayakumar



Versus the State by the Inspector of Police, Karumalaikoodal Police Station, Salem District in CrI.O.P.No.6029 of 2021, dated 30.03.2021" and in the case of "Vaiko Versus State by., its, The Sub Inspector of Police, Chintadaripet Police Station, Triplicane, Chennai in CrI.O.P.No.10342 of 2021, dated 07.07.2021."

6.The learned Additional Public Prosecutor appearing for the 1st respondent Police submitted that the 1st respondent Police received information that the 1st petitioner along with his party members were conducting protest at Narayanappan Street, North Beach, Chennai against NEET exam, without any valid permission. The Police party had gone there requested the leader of MDMK party to disperse from the place, but they refused to do so. Due to the protest, the free movement of public and vehicles were obstructed and law and order problem were arisen. Further, the protesters also attempted to burn effigy in the public road, hence, they were arrested. During investigation, the witnesses were examined, their statements were recorded. All the witnesses have all confirmed about the protest and attempt of burning effigy. LW7 and LW8 are witnesses to the Observation Mahazar and Rough Sketch. LW9 is the Investigating Officer. The points raised by the petitioner are to be decided only during trial and not in this quash petition.

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

8.It is seen that except LW7 and LW8, who are the witnesses to the Observation Mahazar and Rough Sketch, all other witnesses are Police personnels attached to the 1st respondent Police Station. In this case, the complainant as well as the Investigating Officer are one and the same. The FIR registered on 10.08.2017, on the same day, all the witnesses were examined and their statements were recorded. The Hon'ble Apex Court in the case of "Varinder Kumar Versus State of Himachal Pradesh reported in (2020) 3 SCC 321" held that if the accused is able to show prejudice caused due to the complainant and the Investigating Officer are one and the same, the same has to be considered.

9.In this case, the statement of witnesses are parrot like version, which shows that it is only a table top investigation. From the Observation Mahazar, no combustible material was recorded to show whether effigy was burnt in the scene of occurrence. Further, no public lodged a complaint about any obstruction of free movement of traffic. The petitioners and other held protest at Rajaji Road, which is adjacent to the Madras Collectorate Office, where normally permission for protest would be granted.



10. In view of the above, the continuation of the proceedings in C.C.No.15 of 2020, on the file of the Assistant Sessions Judge, Additional Special Court for Trial of Criminal Cases Related to Elected M.P's and M.L.A's of Tamil Nadu, Chennai would amount to abuse of process of law and same is liable to be quashed and is quashed against the petitioners and also the other accused. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To

1. The Assistant Sessions Judge,
Additional Special Court for Trial of
Criminal Cases Related to Elected
M.P's and M.L.A's of Tamil Nadu,
Chennai.
2. The Inspector of Police (Law and Order),
B1 North Beach Police Station,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.R.Priyakumar, Advocate, S.R.No.4072

Cr1.O.P.No.1181 of 2022

KSM(CO)
RGA(24/02/2022)