



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.1824 of 2022 and
Crl.M.P.Nos.743 & 744 of 2022

1.J.S.Chidhambaram
2.Deenthalayan
3.B.R.C.Srinivasan
4.K.Balaji
5.M.Kumar
6.V.Vishnu Prasath
7.M.Manojikumar
8.S.Saravanan
9.S.B.Saravanan
10.S.T.Premkumar
11.S.Elumalai
12.S.Pramekumar
13.P.Nakkiran

... Petitioners/Accused

Vs.

1.State rep. By,
Inspector of Police,
Ambur Town Police Station,
(Law and Order),
Vellore - 600 001.
(Crime No.1735 of 2020).

2.Babu,
S/o.Not known to the petitioners,
Village Administrative Officer,
Ambur Town,
Tirupathur District.

... Respondents/Complainant/
Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in S.T.C.No.213 of 2020 on the file of the learned Judicial Magistrate, Ambur, Tirupattur to quash the same.



WEB COPY

For Petitioners :Mr.G.Mutharasu, for
Mr.K.Gangadaran

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

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.213 of 2020, on the file of the Judicial Magistrate Court, Ambur, Tirupattur.

2.The gist of the case is that on 16.07.2020, at about 10.30 a.m., despite the prohibitory order under Section 144 Cr.P.C., was in force, the petitioners held protest against one You Tube video which was circulated in social media defaming the Lord Muruga and about his devotee song Kandha Sashti Kavasam by portrait abusive words. Despite warning of COVID-19 pandemic, they continued their protest. Hence, a complaint has been lodged by the 2nd respondent, Village Administrative Officer Ambur Town, Tirupattur to the 1st respondent Police, who on receipt of the same, registered a case in Crime No.1735 of 2020, for offences under Sections 143, 188, 269, 270 of IPC r/w 2 and 3 of the Epidemic Diseases Act r/w 51(b) of the Disaster Management Act and on completion of investigation, charge sheet has been filed before the learned Judicial Magistrate, Ambur, which was taken on file as S.T.C.No.213 of 2020, listing seven witnesses as LW1 to LW7, for offences under Sections 143, 188, 269, 270 IPC r/w 2 and 3 of the Epidemic Diseases Act r/w 51(b) of the Disaster Management Act.

3.The learned counsel for the petitioners submitted that the petitioners are law abiding citizens, they are not involved in any offence as alleged by the respondent police. In such case, implicating the petitioners under the above offences is void ab initio. The petitioners had not indulged in any activity of spreading disease to others. He further submitted that the petitioners raised slogans on the edge of the road margin and they are protected under Article 19(1)(a), 19(1)(b) and 19(1)(c) of the Constitution of India. The learned Magistrate before taking the charge sheet on file, ought to have seen that the petitioners were conducted a peaceful protest, but in this case, it is not done.



4.He further submitted that 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 Crl.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 Crl. 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. Hence, he prayed for quashing of the proceedings.

5.The learned Additional Public Prosecutor appearing for the respondent Police submitted that the Government had passed prohibitory order under Section 144 Cr.P.C., due to Corona Pandemic. Despite warning of the respondent Police, the petitioners unnecessarily conducted protest in public place, without any reason and involved in spreading of Corona virus. Hence, the FIR came to be registered against the petitioners.

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

7.On a perusal of records and submissions of both sides, it is seen that on 16.07.2020, the petitioners went out without any reason, while prohibiting order was in force under Section 144 Cr.P.C. A case can be registered only if a person indulges in the act to believe that the disease can be spread to others. There is no material to show that the petitioner were not wearing mask while showing protest. Thus, the offences are not made out, because the petitioners did not indulge in any activity that may spread disease to others.

8.Admittedly in this case, the occurrence had taken place in the public place and view, no public or independent witness examined by the prosecution, which causes serious doubt on the veracity of the complaint. 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 petitioners. Further, in consequence to the protest, the prosecution failed to show whether any trouble injuries occurred.

9.From the statement of the witnesses produced, nowhere it is seen that the prohibitory order in force has been promulgated. Only the petitioners were ordered to disburse.



None of the witnesses have stated that the petitioners did not wear face mask and did not keep safe distance and violated the directions issued by the both State and Central Government. In this case, the prejudice against the accused is very much there, since the witnesses examined are all Police personnels and no independent witness was examined. Further, there is nothing to show that there have been any promulgation of prohibitory order and the petitioners formed themselves as an unlawful assembly. In several cases, this Court quashes the proceedings against the accused/protesters on the similar ground.

10. In the result, the proceedings in S.T.C.No.213 of 2020, on the file of the Judicial Magistrate Court, Ambur is hereby quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CCC)

// True Copy //

Sub Assistant Registrar

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To

1. The Judicial Magistrate,
Ambur, Tirupattur.
2. The Inspector of Police,
Ambur Town Police Station,
(Law and Order),
Vellore - 600 001.
3. The Public Prosecutor,
High Court, Madras.

Crl.O.P.No.1824 of 2022

AK(CO)
CB(18/02/2022)