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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2022

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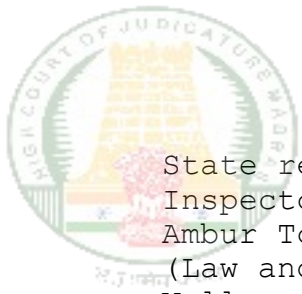
THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.1862 of 2022 and
Crl.M.P.Nos.790 & 791 of 2022

- 1.Chidhambaram
- 2.V.Srinivasan
- 3.Murugasan
- 4.K.Babu
- 5.Laksmikanthan
- 6.B.R.C Srinivasan
- 7.Sivaprakeshsam
- 8.K.E.Haridass
- 9.Poobalan
- 10.Sunder
- 11.Ponnan
- 12.Govindaraj
- 13.V.Saravanan
- 14.Murali
- 15.P.Sureshkumar
- 16.Poobalan
- 17.G.Manisiva
- 18.K.M.Rajamani
- 19.Annumuthu
- 20.Sampainki
- 21.Karthikeyan
- 22.Mohankumar
- 23.Kottishwaran
- 24.Shanker
- 25.Chandrakuru
- 26.Lokeshwaran
- 27.Thengaran
- 28.E.Sureshbabu
- 29.E.Velu
- 30.Sridher
- 31.Saravanan
- 32.Kuppusamy
- 33.Sathiyamorrthy
- 34.M.Prabhu
- 35.Vijaya
- 36.Yuvraj

... Petitioners

Vs.



State rep. by,
Inspector of Police,
Ambur Town Police Station,
(Law and Order),
Vellore - 600 001.
(Crime No.1750 of 2020).

... Respondent

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.211 of 2020 on the file of the learned Judicial Magistrate, Ambur, Tirupattur to quash the same as illegal.

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.211 of 2020, on the file of the Judicial Magistrate Court, Ambur, Tirupattur.

2.The gist of the case is that on 03.08.2020, at about 11.00 a.m., despite the prohibitory order under Section 144 Cr.P.C., was in force, the petitioners were roaming without wearing mask near Ambur Nethaji Road to show protest against one Sundravalli, who defamed Thirugnanasamanthar and Lord Shiva. Hence, the respondent Police secured them and registered a case in Crime No.1750 of 2020, for the offence, under Sections 269, 188 IPC r/w 2 & 3 of the Epidemic Diseases Act r/w 51(b) of the Disaster Management Act. After completion of investigation, charge sheet came to be filed before the learned Judicial Magistrate, Ambur, listing four witnesses and documents.

3.The learned counsel for the petitioner submitted that the petitioners have completely unaware about registration of FIR against them. 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.

4.The learned counsel for the petitioners submitted that this Court in catena of judgments have clearly held that the



police personnel 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 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 roamed in and around in Ambur Nethaji Road, 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 03.08.2020, 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. Further, this Court in the case of "Jeevanandham and others Vs. State Rep. by Inspector of Police and another reported in (2018) 2 LW Crl. 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 petitioners.



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.

9. In the result, the proceedings in S.T.C.No.211 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 (CS-V)

//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.

Cr1.O.P.No.1862 of 2022

CP (CO)
GMY (16/03/2022)