



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.02.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.1726 of 2022 and
CrI.M.P.Nos.690 & 691 of 2022

1.Kamrudin
2.Harish
3.Anwar Hussain
4.Saiyathu Ibrahim
5.Babu
6.Abuthageer

...Petitioners/Accused 1to6

Vs.

1.State Rep by its,
The Inspector of Police,
Selvapuram Police Station,
Coimbatore.
(Cr.No.117/2020).

2.Chinnadurai R

...Respondents/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.1532/2020 pending on the files of Judicial Magistrate Court - V, Coimbatore and quash the same as illegal and without jurisdiction.

For Petitioners : Mr.K.Nizamuddin

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.1532 of 2020, on the file of the Judicial Magistrate Court No.V, Coimbatore.

2.The case of the prosecution in brevity is that on 30.01.2020, at about 07.00 p.m., when the Sub Inspector of Police, Special Sub Inspector of Police and Grade-II Police Constable attached to the 1st respondent Police were on patrol duty in Porur Main Road near Anna Statue, the petitioners held protest against CAA, NRC and NRP Acts, without any prior permission from the concerned authority. Despite warning of COVID-19 pandemic, they continued their protest. Hence, the



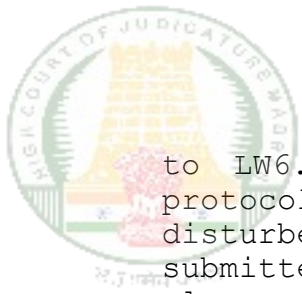
1st respondent Police arrested the accused and registered an FIR against them in Crime No.117 of 2020, for offence under Sections 143 and 341 IPC, after completion of investigation, charge sheet came to be filed before the learned Judicial Magistrate No.V, Coimbatore, which was taken on file as C.C.No.1532 of 2020, listing six witnesses as LW1 to LW6.

3.The learned counsel for the petitioner submitted that the petitioners are falsely implicated in this case for political reason as a political vendetta. He further submitted that the petitioners are passerby, near the Anna Statue, at that time the protest was held following the protocol of safety. The 1st respondent Police lodged a false complaint, against which the present petition. Showing protest is the hallmark of democracy and it is a fundamental right enshrined in the Constitution of India. Article 19(a) confers Freedom of Speech; Article 19(1)(b) confers Right to Assemble; 19(1)(d) permits peaceful march. The peaceful protest in non violent manner would no way attract the violation of any directions and rules.

4.The learned counsel for the petitioner further submitted that the prohibitory order in force has not been properly promulgated and there was no declaration of any such prohibitory order. The 1st respondent Police is duty bound to promulgate if such order was in force, but no steps have been taken as per Section 129 of Cr.P.C., which is mandatory. Further, in this case the witnesses LW1, LW2, LW3 and LW6 are all Police personals attached to the 1st respondent Police. The independent witnesses LW4 and LW5 are obliging witness to the 1st respondent Police.

5.He further submitted that this Court as well as the Hon'ble Apex Court time and again held that the complainant himself cannot be an investigating officer, which would vitiate the entire investigation. The only exception is that it is to be seen whether any prejudice caused to the accused by such investigation. The witnesses have not stated about any unlawful assembly, restriction of any public movement. The petitioners were wearing face mask and maintained social distance as per the Standard Operating Procedure which can never be termed as unlawful assembly.

6.The learned Additional Public Prosecutor appearing on behalf of the 1st respondent Police submitted that on 30.01.2020, at about 07.00 p.m., the petitioners held protest against CAA, NRC and NRP Acts, without any prior permission from the concerned authority in Porur Main Road, Anna Statue. Hence, the 1st respondent Police arrested the accused and registered an FIR against them in Crime No.117 of 2020, for offence under Sections 143 and 341 IPC, after completion of investigation, charge sheet came to be filed before the learned Judicial Magistrate No.V, Coimbatore, which was taken on file as C.C.No.1532 of 2020, listing six witnesses as LW1



to LW6. He further submitted that without following the protocols, the petitioners assembled and made protest and also disturbed the traffic and public movement. He further submitted that the 1st respondent Police was on patrol duty along with other Police and warned the petitioners to disperse. Despite warning, they failed to disburse. The trial Court had taken the cognizance of the case, issued summons and thereafter, the petitioners approached this Court. The points raised by the petitioner are to be decided only during the trial and not in the Quash Petition.

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

8.It is admitted that the LW1 is the Sub Inspector of Police, who had registered the case in Crime No.117 of 2020 against the petitioners. The complainant himself had taken up the investigation, examined four Police witnesses and two independent witnesses. Showing protest in a peaceful manner is the hallmark of democracy and it is a fundamental right.

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. This Court as well as the Hon'ble Apex Court held that 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. Further, there is nothing to show that there have been any promulgation of prohibitory order and the protesters formed themselves as an unlawful assembly.

10.Thus, the continuation of the proceedings would amount to abuse of process of law and hence, this Court is inclined to quash the proceedings against petitioners.

11.Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.1532 of 2020, on the file of the Judicial Magistrate Court No.V, Coimbatore is quashed against the petitioners. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//



Vv2

To

1.The Judicial Magistrate Court No.V,
Coimbatore.

2.The Inspector of Police,
Selvapuram Police Station,
Coimbatore.

3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.I.Abdul Basith, Advocate SR. No.6555

Crl.O.P.No.1726 of 2022

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