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Crl.O.P.No.1547 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.09.2022

CORAM

THE HON'BLE MS. JUSTICE R.N.MANJULA

CRL.O.P.NO.1547 OF 2021
AND
CRL.MP.NOS.893 & 894 OF 2021

1.Jilaludeen
2.Rangarajan
3.Thameem Ansari

... Petitioners /Accused

Vs.

1.The State rep by
the Sub-Inspector of Police,
Seven Wells Police Station,
Flower Bazaar,
Chennai.

2.Mr.Suresh
the Sub- Inspector of Police,
670, Seven Wells Police Station,
Chennai.

...Respondent/ Complainant

PRAYER: This Criminal Original Petition filed under Section 482 of Cr.P.C., praying to call for the records in C.C.No.219 of 2020 on the file of the VIII Metropolitan Magistrate Court, Georgetown and to quash the same.

For Petitioners : Mr.R.Thirumoorthy

For Respondents : Mr.A.Damodaran

Additional Public Prosecutor for R1



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ORDER

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This Criminal Original Petition has been preferred to recall the records pertaining to CC.No.219 of 2020 on the file of VIII Metropolitan Magistrate Court, Georgetown and quash the same.

2. The case has been registered by the first respondent police on the allegation that on 22.12.2019 at about 10 a.m., when the second respondent who is the Sub Inspector of Police along with the Head Constable were on patrol duty, they found near the junction of Seven Wells Street that flags of communist party of India-Marxist (CPIM) were tied in each of the houses and near the junction of the Seven Wells Street and the parties flag were also displayed in between the Streets. They also saw the first petitioner, the Secretary of CPIM of Harbour community and 9 others, were distributing pamphlets and canvassed against the Citizenship Amendment Act without getting prior permission. Hence, the respondent police has registered a case in Crime No.342 of 2019 against the petitioners for the offences under sections 143, 290 of IPC, Section 41 Tamil Nadu City Police Act, 1888 & Section 4B of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959. After completing the



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investigation, charge sheet was filed against the six accused under Sections 143, 290 IPC Section 41 Tamil Nadu City Police Act, 1888 & Section 4B of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959.

3. The learned counsel for the petitioners submitted that without any materials to substantiate the case of the prosecution, the charge sheet has been filed; even under Section 2 of Tamil Nadu Open Spaces (Prevention of Disfigurement) Act, 1959, the objectionable/objected advertisement would only mean any advertisement which would incite violence; the offences charged against the petitioners are not cognizable in nature and the first respondent had proceeded to investigate without getting any prior permission from the concerned jurisdictional magistrate; the complainant and the Investigation Officer are one and the same and hence it is against the principle of law laid down by the Hon'ble Supreme Court; the allegations made in the complaint does not make out any cognizable offence or even any non cognizable offence and hence the charge sheet should be quashed.



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4. On perusal of the complaint, it is alleged that in the place

of occurrence the accused had displayed flags between the Streets and issued pamphlets against the Citizenship Amendment Act. The case has been registered because of want of permission from the concerned authority for issuing the pamphlets and conducting meetings.

5. Obviously the allegations and the materials available on record does not disclose that any meeting was held or convened by the petitioners and in which the public had participated. It is neither stated that the petitioners were going in procession in public places. Section 41 of the Tamil Nadu Police Act can be invoked only in respect of regulation of meetings and assembly or processions in the public places. Since there is no overtact on the part of the petitioners, in this regard the invocation of section 41 of Tamil Nadu City police Act is unnecessary. A person can be charged for the offence of unlawful assembly only if he had used any criminal force or showed criminal force to resist execution of law or any legal process. In the case on hand, the petitioners just protested and expressing their views in a decent and in a democratic manner. So the act of the petitioners will not fall under the definition of unlawful assembly.



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Unlawful Assembly is defined under Section 141 of the Indian Penal Code

reads as under:

"141. Unlawful assembly

An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is-

First-To overawe by criminal force, or show of criminal force, [the Central or any State Government of Parliament or the Legislature of any State], or any public servant in the exercise of the lawful power of such public servant; or

Second-To resist the execution of any law, or of any legal process; or

Third-To commit any mischief or criminal trespass, or other offence; or

Fourth-By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth-By means of criminal force, or show of



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criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do. "

As stated already, the materials on record does not make out any offence under Section 143 of IPC in order to punish the petitioners for the offence of unlawful assembly.

6. Section 290 of IPC deals with causing public nuisance.

Excepting the self assertive statement of the police party, no member of public have complained about any disturbance or displeasure to the police by stating that the petitioners have caused public nuisance in any manner. Hence, the offence under Section 290 IPC is also baseless.

7. The remaining Penal Provisions is Section 4B of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959. The above charge was made on the allegation that the petitioners were involved in unauthorized disfigurement of their advertisement. It is not stated that what kind of objectionable advertisement was made by the petitioners in



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their pamphlets. In fact the respondent police did not seize any pamphlets though it is an important material in this case. Further Section 2(a) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959 defines 'advertisement' as under:

"2(a) "advertisement" includes any effigy or any bill, notice, document, paper or other thing containing any words, signs or visible representations; "

8. But what is punishable is only objectionable advertisement. The 'objectionable advertisement' is defined under section 2(b) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959 is as under;

"2(b) "objectionable advertisement" means any advertisement which is likely to-

(i) incite any person to commit murder, sabotage or any offence involving violence; or

(ii) seduce any member of any of the armed forces of the Union or of the police forces from his allegiance or his duty, or prejudice the recruiting of persons to serve in any such force or prejudice the discipline of any such force; or



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(iii) incite any section of the citizens of India to acts of violence against any other section of the citizens of India; or which-

(iv) is deliberately intended to outrage the religious feelings of any class of the citizens of India by insulting or blaspheming or profaning the religion or the religious beliefs of that class; or

(v) is grossly indecent, or is scurrilous or obscene or intended for blackmail;"

9. There is no averments made in the complaint or any other statement that the petitioners were involved in making objectionable advertisements which would insight violences or lead to any of the sequences as defined above. In the absence of any material facts if the petitioners sought to be to tried, it is only a wasteful time for the Court.

10. It is further submitted that despite the offences are cognizable or non cognizable in nature, the prior permission was not obtained from the jurisdictional Magistrate for undertaking investigation. In this regard it is relevant to cite the judgement made in the case of ***STATE OF HARYANA VS. BHAJANLAL [1992 SUPP(1) SCC 335]***:-



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"8.1. 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- i7 myriad kinds of cases wherein such power should be exercised:

(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;



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(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



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maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge. [305D-H; 306A-E] 8.2. In the instant case, the allegations made in the complaint, do clearly constitute a cognizable offence just-i7 on 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."

11. Since the first respondent did not abide the due procedure and the materials also do not disclose any offence involved, I feel it is an appropriate case where the court should exercise its power under Section 482 and quash the proceedings not only against the petitioners but in entirety.

12. Accordingly, this Criminal Original Petition is **allowed**. The order of the VIII Metropolitan Magistrate Court, Georgetown passed in C.C.No.219 of 2020 is quashed. Consequently, the connected miscellaneous petitions are closed.

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Speaking/Non-speaking
Index : Yes/No
jrs

R.N.MANJULA, J.



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jrs

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- 2.The VIII Metropolitan Magistrate Court
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- 3.The Public Prosecutor
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