



WEB COPY



CrI.OP.No.2742 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 7/7/2022

C O R A M

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

CrI.O.P.No.2742 of 2019

a n d

CrI.M.P.No.1761 of 2019

Kayal

...

Petitioner

Vs

The State

rep. Through Inspector of Police

D 1 Triplicane Police Station

Law and Order

Chennai 2.

...

Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the charge sheet filed in C.C.No.5803 of 2018 pending on the file of 13th Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioner

...

Mr.S.Conscious Elango

For Respondent

...

Mr.A.Gokulakrishnan
Additional Public Prosecutor



Crl.OP.No.2742 of 2019

ORDER

WEB COPY

This Criminal Original petition has been filed to quash the proceedings in C.C.No.5803 of 2018 in Crime No.321 of 2018, pending on the file of 13th Metropolitan Magistrate, Egmore, Chennai, for the offences punishable under Sections 143, 188 of the Indian Penal Code r/w. 41 (6) of the CP Act @ 143, 188, 353 of the Indian Penal Code r/w. 41 (6) of the CP Act.

2. The case of the prosecution is that on 24/5/2018, @ 04.00 p.m., on receipt of information, the respondent Police, visited the spot, where the people belong to various organisations were going to gather near the Government Guest House at Chepauk and take a procession to the Secretariat, for the closure of Tuticorin Sterlite Company. Since the petitioner and others gathered without getting prior permission from the concerned authority, she had committed the offences punishable under Sections 143, 188 of the Indian Penal Code r/w. 41 (6) of the CP Act.

3. The learned counsel for the petitioner submitted that the prosecution has been launched with false allegations and even the entire prosecution case taken at



CrI.OP.No.2742 of 2019

its face value would not constitute any offence and continuing the prosecution is nothing but an abuse of process of law. Therefore, submitted that the same may be quashed.

4. The Learned Additional Public Prosecutor submitted that the accused unlawfully assembled and caused disturbance to the public, thereby, she has been prosecuted.

5. It is to be noted that while exercising the power under Section 482 of Cr.P.C, the Court should be slow and if the Court finds that the entire materials collected by the prosecution, taken as a whole, would not constitute any offence, in such situation, directing the parties to undergo ordeal of trial will be a futile exercise and it will infringe the right of the persons and in this regard, the Hon'ble Apex Court in **State of Haryana and others Vs. Bhajan Lal and Others** reported in **1992 Supp (1) Supreme Court Cases 335**, has held as follows :

'.....

(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;

(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 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.'



Crl.OP.No.2742 of 2019

6. Similarly to attract the offence under Section 188 of IPC, disobedience of the order promulgated by the public servant should be shown. However, in the case on hand, no material has been placed before this Court to show that such a promulgation was in place and that the petitioner violated the prohibitory orders and had unlawfully assembled. Merely because the petitioner was in the said place or had even partaken herself in the assembly would not render her act to fall within Section 188 IPC. In the absence of any promulgation by the police authorities, the presence of the petitioner in the gathering cannot be said to be unlawful and cannot be said to constitute any offence. In this regard it is relevant to refer to a judgment of this Court in Crl.O.P.(MD) No.7758 of 2020 and 1512 of 2021, dated 23/2/2021 **Moogambigai S.Thirugnanasammantham and others Vs. State rep. by the Inspector of Police, Karur**, wherein it has been held as follows:

'....

(9) When the allegations in the FIR and the materials collected by the prosecution does not disclose the commission of any offence and make out a case against the accused and the prosecution itself is instituted with an



WEB COPY



Crl.OP.No.2742 of 2019

ulterior motive for wreaking vengeance, this Court can exercise power under Section 482 Cr.P.C. with regard to quashing of the charge sheet for the offence under Section 188 IPC, this Court in Jeevanandam and others Vs. State rep. by the Inspector of Police reported in 2018-2-L.W.(Crl) 606 has relied a judgment in V.Gowthaman and others Vs. State rep. by its Inspector of Police, St.Thomas Mount Police Station, Chennai reported in '2018 (4) CTC 252' and held that the cognizance taken by the Magistrate under Section 188 IPC is not permissible and therefore, the prosecution of the accused under Section 188 IPC stands quashed.'

7. Insofar as the offence alleged against the petitioner u/s 353 IPC is concerned, it is to be pointed out that there are no details about criminal force having been used by the petitioner to deter the defacto complainant from discharging his duty. In the absence of such material, the offence under Section 353 of IPC also is not made out.



Crl.OP.No.2742 of 2019

WEB COPY

8. There is no material placed before this Court to show that the petitioner, along with the other members of the assembly were armed with deadly weapons. Such being the case, the presence of the petitioner in the said assembly cannot be said to be for the purpose of causing disturbance to the general public and is against any prohibitory orders issued by the police authorities.

9. Further, for the police to initiate prosecution under section 188 of IPC, cognizance can be taken only on the complaint in writing by a public servant and in the absence of the same, there is a bar under section 195 of Cr.P.C. for the Court to take cognizance of the offence. Therefore, the prosecution u/s 188 IPC also cannot be sustained.

10. On an overall consideration of the materials and in view of the discussion aforesaid, this Court is of the considered view that continuing the proceedings against the petitioner would be nothing but an exercise in futility. In the absence of the prosecution placing conclusive materials to substantiate the



Crl.OP.No.2742 of 2019

prosecution launched, this Court has to definitely interfere by quashing the FIR,
which is nothing but an abuse of process of law.



Crl.OP.No.2742 of 2019

N.SATHISH KUMAR,J

WEB COPY

mvs.

11. Accordingly, this Criminal Original Petition is allowed and proceedings in C.C.No.5803 of 2018 in Crime No.321 of 2018 on the file of 13th Metropolitan Magistrate, Egmore, Chennai, against the petitioner/A.15 alone is quashed. Consequently, the connected Criminal Miscellaneous Petition is closed.

7/7/2022

Internet : Yes / No
Index : Yes / No
Speaking / Non Speaking order

mvs.

To

1. 13th Metropolitan Magistrate, Egmore, Chennai
2. The Inspector of Police, D 1 Triplicane Police Station
Law and Order, Chennai 2.
3. The Public Prosecutor, High Court, Madras.

Crl.O.P.No.2742 of 2019

9/8