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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11.01.2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.11444 of 2018
and Crl.M.P.No.5941 & 5942 of 2018

1.Kadeswar C Subramaniam
2.J.S.Kishore Kumar
3.A.T.Elango
4.L.Amuthan Sendhil
5.Saran Raj
6.Sathiyadan
7.M.Sridher
8.Kamalesh
9.Manikandan @ Balasubramanian
10.Meganathan

...Petitioners

Versus

State represented by
Inspector of Police,
D-4, JamBazaar Police Station,
Law and Order,
Triplicane,
Chennai-600 005.

...Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records in C.C.No.1460 of 2018 on the file of learned XIII Metropolitan Magistrate, Egmore, Chennai for the alleged offences under Section 143, 353 of Indian Penal Code and quash the same.

For Petitioners : M/s.Dr.G.Krishnamurthy

For Respondent : Mr.R.Kishore Kumar
Government Advocate (Crl.Side)

O R D E R

This Criminal Original Petition has been filed to call for the records and quash the proceedings in C.C.No.1460 of 2018 on the file of learned XIII Metropolitan Magistrate, Egmore, Chennai for the alleged offences under Section 143, 353 of IPC.



2. The crux of the final report is that the accused while carrying the Lord Ganesha idol to immerse into the sea on the eve of Lord Ganesh Vinayaka Chaturthi, the same was prevented by the Police officials. Thereby, they committed the aforesaid offence.

3. The learned counsel for the petitioners submitted that infact, the accused is said to have been given permission to carry the idol of Lord Ganesh and merely because of raising the slogans of Lord Ganesh, they have been prosecuted for the offences under Sections 143, 353 of IPC. It is relevant to note that there is no other materials available on record about the identity of the accused and it is also made clear that the final report has been filed mechanically. Hence, he prayed to quash the proceedings.

4. The learned Government Advocate(Crl. Side) submitted that as rightly pointed out, the accused have not assembled unlawfully, infact, they have been given permission by the concerned authorities to carry the Lord Ganesha idol. While carrying the idol, they have raised some slogans, but they got permissions only to go in a particular way by carrying the Ganesha idol.

5. This Court has perused the entire materials available on record. When the persons assembled after getting permission from the concerned authorities, their act cannot be termed as unlawful assembly and merely because they sought permission to go in a particular way, it cannot be stated as offence under Section 353 of I.P.C has been made out. In this case, there is no other materials available on record to show that the accused has done such intentional act. In such view of the matter, the materials unearthed by the prosecution has not shown the identity of the persons. Therefore, when the entire materials unearthed by the prosecution taken in the face value do not constitute any offence and still forcing the party to face the ordeal of the trial is nothing but abuse of process of law. Hence, the proceedings against the petitioners is quashed. Accordingly, this Criminal Original Petition is allowed. Consequently connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar



msv/nr

To

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1. The XIII Metropolitan Magistrate,
Egmore, Chennai.
2. -Do- Thro The Chief Metropolitan Magistrate,
Egmore, Chennai-8.
3. The Inspector of Police,
D-4, JamBazzar Police Station,
Law and order,
Triplicane, Chennai-600 005.
4. The Public Prosecutor
High Court, Madras.

+1cc to Dr.G.Krishnamurthy, Advocate SR.2587

Cr1. O.P. No.11444 of 2018
and Cr1.M.P.No.5941&5942 of 2018

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srg 02/02/2022