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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.03.2022

CORAM :

THE HONOURABLE MR. JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.5612 of 2022

and

Crl.M.P.No.3085 of 2022

1. Shahainudeen @ Saga
2. Mohamed Thanseer @ Dhanaseer
3. Mohamed razuk @ Mohamed Rasith
4. Mohamed Azarudeen

... Petitioners / 1 to 4 Accused

Vs.

State Represented its,
The Special Sub-Inspector of Police,
Keevalur Police Station,
Nagapattinam.
(Crime No.1225 of 2020)

... Respondent / Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, pleaded to call for the records in Crime No.1225 of 2020 on the files of the Respondent herein and quash the same as illegal.

For Petitioners : Mr.I.Abdul Basith

For Responde : Mr.A.Gokulakrishnan
Additional Public Prosecutor.

O R D E R

The Criminal Original Petition has been filed to call for the records in Crime No.1225 of 2020 on the files of the Respondent and quash the same.

2. The case of the petitioners is that on 13.06.2020, when Section 144 Cr.P.C ban was in force, the petitioners without following the regulations of Covid~19 protocol, protested in an unlawful manner without any prior permission against the arrest



of Muslims for participated in the Anti-CAA, NRC protest in Delhi and Uttar Pradesh.

3. Hence, a case in Crime No.1225 of 2020 for the offences under Sections 341, 143, 188 and 269 of IPC has been registered on the same day. The present petition is filed to quash the First Information Report in Crime No.1225 of 2020.

4. This petition is filed mainly on the ground that Section 188 IPC is non-cognizable offence and the police has no right to register the case and investigate. Sections 269 and 341 IPC are concerned, there is no intention on the part of the petitioners to spread the disease to another.

5. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor appearing for the respondent and perused the materials available on record.

6. In the judgment reported in 2018(2) L.W (Cr1.)606 (In Jeevanandhan and others Vs. State rep. by Inspector of Police, Velayuthampalayam Police Station, Karur District and another) it has been held that the police has no right to file a case under Section 188 IPC and to investigate the same without getting proper permission from the concerned jurisdictional Magistrate. Here, there is no material to show that before registering the case, permission of the concerned jurisdictional Magistrate has been obtained. In such circumstances, the respondent has no right to register the case and to investigate the matter.

7. A detailed guideline has been issued by this Court in the judgment cited supra. On this aspect, Section 188 IPC will not stand against the petitioners. The offence under Sections 269 and 341 IPC are concerned, as per the contents of the First Information Report, it is seen that the petitioners protested in an unlawful manner during the pandemic period. No act of violence or untoward incident is reported. It is a trivial matter in which no offence of grievous nature is involved. Even though Section 144 Cr.P.C order was in force, during the relevant time the respondent police ought to have warned the petitioners to go in-door, instead of that, they filed a case. It is also not the case of the respondent that at the time of the incident, the petitioners was affected by Covid-19. So the contention that conducting protest during the pandemic period will spread the disease is without any basis. Section 143 IPC is concerned, it specifies the period of punishment for a person who is a member of an unlawful assembly.

8. Section 141 IPC defines unlawful assembly as under:

141. Unlawful assembly



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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 or 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 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.

9. In the light of the above definition scanning through the final report, it can be observed that it cannot be termed as unlawful assembly. Similarly for attracting offences under Sections 269 and 341 IPC also, there are no materials to show that the petitioners and others were also affected by Covid-19 virus and because of their assembly virus spread to others. Since in the absence of any such materials on record, the offence under Sections 269 and 341 IPC are not attracted.

10. Considering the nature of allegations and the offences involved in this case, this Court is of the opinion that protesting for the welfare of the public should not be held to be a reason for spoiling the future of the petitioners. Unintended casual act, without any act of violence, should not take away the future of the petitioners. Moreover, it is also brought to the notice of this Court that the Government is also going to drop all these cases, which have been registered during the pandemic period against the public. Taking all these aspects into account, this Court is of the considered view that the



First Information Report in Crime No.1225 of 2020 on the file of the respondent is liable to be quashed and the same is quashed.

11. Accordingly, the Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

ham/rgi

To

1. The Special Sub-Inspector of Police,
Keevalur Police Station,
Nagapattinam.
2. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.I.Abdul Basith, Advocate, S.R.No.16961

Cr1.O.P.No.5612 of 2022
and Cr1.M.P.No.3085 of 2022

GPL[co]
NSK 25/03/2022