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CrI.O.P No.5307 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.09.2022

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THE HONOURABLE Ms. JUSTICE R.N.MANJULA

CrI.O.P No.5307 of 2021

and

CrI.M.P No.3393 of 2021

- 1.Tenzin Lobsang
- 2.Yeshi Sherpa
- 3.Kalsang Gyaltsso
- 4.Rinzin Choedon
- 5.Palden Dhondup
- 6.Tsering Dhondup
- 7.Jigme Dhonyou
- 8.Tashi Lhakden

... Petitioners

Vs.

- 1.State Rep. by
The Inspector of Police,
Selaiyur Police Station
St. Thomas Mount
Chennai

- 2.Rajasekaran

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, praying to call for the records pertaining to Crime No.821 of 2021 on the file of the 1st respondent Police and quash the same.



CrI.O.P No.5307 of 2019

For Petitioners : Mr.R.Thirumoorthy

For Respondents : Mr.A.Damodaran for R1
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed, seeking to call for the records pertaining to Crime No.821 of 2019 pending on the file of the 1st respondent Police and quash the same as illegal.

2.Heard the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor appearing for the 1st respondent.

3. The case of the prosecution is that the petitioners were protesting at Adhi Nagar junction, Velacherry Main Road, East Tambaram, against the visit of the Chinese President and raising slogans and they also caused threat to the general public and transport; despite warned, they continued to be there; on the above allegations, a case has been registered against the petitioners for the offences under Sections 151 of IPC and 7(1) (a) of Criminal Law Amendment Act, 1932.



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4. The learned counsel for the petitioners submitted that the petitioners have not involved in any other occurrence and they were staying at their flat with their friends; the case has been foisted against them with false allegations; though the FIR has been registered as early as on 06.10.2019, so far charge sheet has not been filed; hence, this case is clearly barred by limitation as prescribed under Section 468 of Cr.P.C.

5. The learned Additional Public Prosecutor submitted that by virtue of alteration of charge memo, the charges have been altered to Section 151, 147, 353 of IPC and Section 7 (1) (a) of Criminal Law Amendment Act 1932.

6. For the offence under Section 151 IPC, the maximum punishment would be six months imprisonment or with fine or with both. For the offence under Section 7(1)(a) of Criminal Law Amendment Act, the maximum punishment is for a period of six months imprisonment or with fine. The punishment for the offence under Section 147 IPC would extend to 2 years imprisonment or with fine or with both. The punishment for the offence under Section 353 would extend to 2 years or with fine or with both. Section



468 Cr.P.C speaks about the limitation for filing the charge sheet for the offences punishable for the period upto three years in the following manner:

468. Bar to taking cognizance after lapse of the period of limitation.

(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section (2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

The maximum punishment for the various offences above stated is two years. Section 468 Cr.P.C prescribes maximum limitation of 3 years for the offence punishable for the term exceeding one year. Though, FIR has been registered as early as on 06.10.2019, for the alleged occurrence taken place on 06.10.2019, so far, investigation has not been completed and the charge sheet has also not been filed. Hence, this case is sheerly barred by limitation. Further, the photographs and other records of conversations produced by the petitioners along with the petition would show that the petitioners were present at their house along with their friends at the time of the alleged occurrence. When the ingredients for the unlawful assembly itself cannot be



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made out, it is needless to say that there cannot be any ingredients against the accused to make out a case for the offences under Section 7(1)(a) of Criminal Law Amendment Act, 1932 and Sections 151 and 353 of IPC as stated already. Because of the failure to file the charge sheet within a prescribed time from the date of occurrence, this case itself is barred by limitation.

7. In view of the above stated reasons, I feel it is appropriate to invoke the powers of this Court under Section 482 of Cr.P.C to quash the FIR.

8. In the result, this Criminal Original Petition stands allowed and the FIR in Crime No.821 of 2019 on the file of the 1st respondent is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

28.09.2022

Index : Yes/No
Speaking Order : Yes / No

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To
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1. The Inspector of Police,
Selayur Police Station
St. Thomas Mount
Chennai
2. The Public Prosecutor
High Court of Madras.



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R.N.MANJULA, J.,

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