



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 29.04.2022

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Cr1.O.P.No.9892 of 2022
and
Cr1.M.P.Nos.5807 and 5879 of 2022

Lena Kumar,
S/o.Laxmanan

... Petitioner

Vs

1.The State Represented by
The Inspector of Police
F-2 Egmore Police Station,
Egmore,
Chennai - 600 000.
(Crime No.1577 of 2015)

2.G.Anand Babu,
The Inspector of Police
F-2 Egmore Police Station,
Egmore,
Chennai - 600 000.

... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records in C.C.No.7622 of 2017 pending on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai and quash the same.

For Petitioner : Mr.I.Periaswamy

For Respondents: Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed, to call for the records in C.C.No.7622 of 2017 pending on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai and quash the same.

2. The case of the prosecution is that on 11.09.2015, at about 11.00 AM, the petitioner along with 66 members belonging to the May 17 Movement, under the leadership of one Mr.Thirumurugan Gandhi had staged a protest near Rajarathinam Stadium, Egmore addressing the "Tamil Eelam Genocide". It is further submitted that without obtaining proper permission from the Court or from appropriate authority, the members of



the said movement had conducted a protest, thereby, causing disturbance to the public. Based on the complaint, a case in Crime No.1577 of 2015 was registered for the offences punishable under Sections 143, 188 of IPC and subsequently altered into offences under Sections 143, 188 and 353 of IPC read with Section 7(1)(a) of the Criminal Law (Amendment) Act, 2013. The respondents, after completion of the investigation, filed a final report against the petitioners in C.C.No.7622 of 2017 on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai for the offences punishable under Sections 143, 188 and 353 of IPC read with Section 7(1)(a) of the Criminal Law (Amendment) Act, 2013.

3. The learned counsel for the petitioner would submit that the petitioner along with 66 participants have assembled in a lawful manner to voice their protest in a democratic manner against the "Tamil Eelam Genocide". He would further submit that there is no evidence to show that the petitioner and others restrained the public servants from discharging their duties. He would further submit that the second respondent/defacto complainant had himself investigated the matter and most of the eye-witnesses in this case are belonging to the second respondent police station. Thereby, the proceedings against the petitioner and others is nothing but abuse of process of law.

4. The learned counsel for the petitioners would further submit that the facts of the case are similar to the case covered in the decision reported in 2018 2 LW (Cr1) 606 [Jeevanandham and others Vs The Inspector of Police Velayuthampalayam Police Station, Karur District] dated 20.09.2018 and in the case of Sri Raja Vs Inspector of Police, Sivakasi Town Police Station Virudhunagar District and other in Cr1.O.P(MD).No.7922 of 2019 etc batch dated 30.08.2019.

5. The learned Additional Public Prosecutor for the respondents would submit that the petitioner and others without proper permission had formed into an unlawful assembly and indulged in a protest addressing the "Tamil Eelam Genocide". He would further submit that even after the instructions given by the respondent police to stop the protest, the petitioner and others have refused to leave and continued protesting.

6. Heard the learned counsel appearing for the petitioner as well as the learned Additional Public Prosecutor appearing for the respondents and perused the materials available on record.

7. The offence under Section 143 of IPC is concerned, it specifies the period of punishment for a person who is a member of an unlawful assembly and it reads as under:-



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"143. Punishment -

Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

The expression "unlawful assembly" is defined in Section 141 of IPC and any member of the said unlawful assembly is punishable under Section 143 of IPC. If the object of the assembly is not unlawful, the Act cannot attract Section 141 of IPC. Thereby any person forming such assembly cannot neither be convicted under Section 143 of IPC nor can be convicted either under Section 147 or Section 149 of IPC.

8. Section 188 of IPC defines disobedience to order duly promulgated by public servant as under:-

"188. Disobedience to order duly promulgated by Public Servant:

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction.

Shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

9. Section 353 of IPC defines assault or criminal force to deter public servant as under:-

"353. Assault or criminal force to deter public servant from discharge of his duty - Whoever assaults or uses criminal force to any person being a public servant in the execution of his duty as such public servant, or with intent to prevent or deter that person from discharging his duty as such public servant, or in consequence of anything done or attempted to be done by such person in the lawful discharge of his duty as such public servant, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both."



10. In the light of the above definitions when we look into the final report, we can easily say that it cannot be termed as unlawful assembly. Similarly for attracting the offences under Sections 143, 188, 353 of IPC read with Section 7(1)(a) of the Criminal Law (Amendment) Act, 2013 no valid legal material is available.

11. Considering the nature of allegations and the offences involved in this case, this Court is of the considered view that protest in a democratic manner without any violence cannot be termed as an unlawful assembly and thereby the proceedings is nothing but an abuse of process of law.

12. Taking all these aspects into account, this Court is of the considered view that the proceedings in C.C.No.7622 of 2017 on the file of the learned XIV Metropolitan Magistrate, Egmore, Chennai, is nothing but abuse of process of law and is hereby quashed in respect of the petitioner and the other accused. This Criminal Original Petition stands allowed. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(co)

//True Copy//

Sub Assistant Registrar

rgm/mp
To

1.The XIV Metropolitan Magistrate,
Egmore, Chennai.

2.The Inspector of Police
F-2 Egmore Police Station,
Egmore,
Chennai - 600 000.

3.The Public Prosecutor,
High Court of Madras.

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and

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SPD(CO)
A.SK(01/06/2022)