

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2022

CORAM

THE HONOURABLE MR. JUSTICE N.SATHISH KUMAR

Crl.O.P.No.14679 of 2022 and
Crl.M.P.No.8115 of 2022

D.Sahul Hameed

... Petitioner/Accused

Vs.

State rep by
The Inspector of Polcie,
Seven Wells Police Station,
Flower Bazaar, Chennai.
(Crime No.72 of 2020)

... Respondent/Complainant

PRAYER: This Criminal Original Petition filed under Section 482 of Cr.P.C., to to call for the records and quash the proceedings as against the petitioners in Crime No.72 of 2020 pending on the file of the respondent.

For Petitioner : Mr.M.Mohamed Riyaz

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

O R D E R

This Criminal Original petition has been filed to call for the records and quash the proceedings as against the petitioner in Crime No.72 of 2020 pending on the file of the respondent Police.

2. The allegation in the FIR indicates that on 25.03.2022, while Section 144 was in force, the petitioner and others gathered near a mosque at Portugal Church Street without getting prior permission from the concerned authority. Thereby, he had committed the offences under Sections 341, 294(b), 353 and 188 of I.P.C, r/w Section 3 of Epidemic Diseases Act and 51(b) of Disaster Management Act,2005.

3. The learned counsel for the petitioner submitted that the prosecution has been launched with false allegations and even when the entire prosecution case taken as a face value, the same would not constitute any offence and continuing the

prosecution is nothing but 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, he 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, at the same time, if the Court finds that from 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 Apex Court in State of Haryana and others Vs. Bhajan Lal and Others reported in 1992 Supp (1) Supreme Court Cases 335, has been 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.'

6. Similarly to attract the offence under Section 188 of IPC, there must be disobedience to order duly promulgated by the public servant. In this case there is no evidence available to show that the accused has assembled to resist or execution of any law and there is no whisper whatsoever available in the First Information Report or in the other materials to show that there were promulgation or there were any prohibitory order existed at the relevant point of time. In this regard it is relevant to refer to a judgment of a Division Bench of this Court in Moogambigai S.Thirugnanasammantham and others Vs. State rep. by the Inspector of Police, Karur reported in 2021 0 Supreme [Mad] 555, 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 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.(Cr1) 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. Even as per the FIR, it is not the case of the defacto complainant/ Head Constable that the petitioner has wrongfully restrained the defacto complainant and hence, offence under section 341 of IPC is not attracted. Similarly, there is no allegation that the petitioner obstructed the defacto complainant or any officers in discharging their functions. Therefore, the offence under section 51[b] of the Disaster Management Act, 2005 will not be attracted. The allegations are mainly attracted against unknown persons. Similarly, there are no details about any criminal force made by the petitioner to deter the defacto complainant from discharging his duty. Hence, offence under section 353 of IPC is also not attracted.

8. Further, there is no material to show that the petitioner and other persons are armed with deadly weapon to attract other offences and there is no whisper about the other accused. The identity of the petitioner has not been established. Similarly, the police have no powers to initiate prosecution under section 188 of IPC. The offence under section 188 of IPC can be taken cognizance only on the complaint in writing by a public servant and there is a clear bar under section 195 of Cr.P.C. for the Court to take cognizance of the offence. Under these circumstances, continuing the proceedings against the petitioner is a futile exercise.

9. Considering the above, this Court is of the view that mere launching of FIR by the prosecution itself is not sufficient to reach to the conclusion that offences are made out and the materials collected by the prosecution do not support for proving the case and continuing the prosecution on shaky or without any materials is clear abuse of process of law.

10. Accordingly, this Criminal Original Petition is allowed and proceedings against the petitioner in Crime No.72 of 2020 on the file of the respondent police is quashed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True copy//

Sub Assistant Registrar

nr/vrc

To

1.The Inspector of Polcie,
Seven Wells Police Station,
Flower Bazaar, Chennai.

2.The Public Prosecutor
High Court, Madras.

+1cc to Mr.M.Mohamed Riyaz, Advocate SR.No.40022

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SSN(CO)
GMY(19/07/2022)