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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :19.01.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.22067 of 2021

and

CRL.M.P.No.11983 of 2021

1. Gokul (A1)
2. Deepan Kumar (A2)
3. Jai Ganesh (A3)
4. Aravindhan (A4)
5. Raja (A5)
6. Mahimaidos (A6)
7. Rajan (A7)
8. Balaji (A8)
9. Sathishkumar (A9)
10. Parthiban (A10)
11. Jeevanandham (A11)
12. Murugan (A12)
13. Gnanaprakash (A13)
14. Lakshmanan (A14)
15. Tamilpudumai Raj (A15)
16. Ganesh (A16)
17. Nepoliyan (A17)

... Petitioners/Accused 1 to 17

Versus

1. The State rep. by
Inspector of Police,
H8 Thiruvottiyur Police Station,
Thiruvottiyur, Chennai. Crime No.889 of 2018
... 1st Respondent/Complainant
2. Mr. Arun Kumar
Sub-Inspector of Police,
H8 Thiruvottiyur Police Station,
Thiruvottiyur, Chennai.
... 2nd Respondent/De facto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the entire proceedings pending on the file of the Inspector of Police, H8 Thiruvottiyur Police Station, Thiruvottiyur, Chennai in Crime No.889 of 2018 against the petitioners and quash the same.



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For Petitioner : Mr.S.Xavier Felix
For Respondent : Mr.E.Raj Thilak
Additional Public Prosecutor

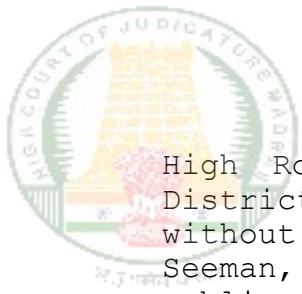
ORDER

This Criminal Original Petition has been filed to call for the proceedings in Crime No.889 of 2018 on the file of the Inspector of Police, H8 Thiruvottriyur Police Station, Thiruvottriyur, Chennai and quash the same.

2.The case of the prosecution is that on 19.07.2018 at about 11.10 a.m. at Thiruvottriyur High Road, Sannadhi Street Junction under the leadership of District Secretary of Naam Tamilar Katchi, the petitioners without any prior permission held protest against the arrest of Seeman, affecting public peace. Further, it is stated that the defacto complainant asked the petitioners to disperse from the place of occurrence. The petitioners herein failed to obey the order. Hence, the respondent arrested the petitioners herein and registered a case for the offence under Section 143, 188 of IPC read with Section 7(1)(a) of Criminal Law Amendment Act, 2005 in Crime No.889 of 2018.

3.The contention of the petitioners is that due to the political pressure, the respondent registered a case in Crime No.889 of 2018. In the final report, there is nothing except reference to the gathering and showing protest for the arrest of Seeman, their party leader. It is mere an expression of protest. The freedom of speech and expression is guaranteed under the Constitution, from the graveman, it is seen no offence is committed. The offence cannot be made out by mere stating facts. Specific overtact of the accused to be stated, supported with statements and documents. Thus no prima facie case is made out against the petitioners for the aforesaid offences. Hence the criminal proceedings initiated against the petitioners in Crime No.889 of 2018 pending on the file of the H8 Thiruvottriyur Police Station, Thiruvottriyur, Chennai, is liable to be quashed.

4.The learned Additional Public Prosecutor submits that in this case on 19.07.2018, at about 11.10 a.m., at Thiruvottriyur



High Road, Sannadhi Street Junction under the leadership of District Secretary of Naam Tamilar Katchi, the other petitioners without prior permission to protest against the arrest of Seeman, their party leader, held protest, caused nuisance to the public and disobeyed the prohibitory orders passed by the police officers. The petitioners when asked to disburse they refused, on the other hand, they raised slogans and caused disturbance to the public. The petitioner and others without obtaining permission from the authorities concerned formed themselves into an unlawful assembly restrained others and caused public nuisance and disturbance.

5.Considering the rival submissions and on perusal of the materials it is admitted fact that the petitioners and others raised protest, which a fundamental right, no public lodged complaint and no public got affected, due to the protest by the petitioners. This Court finds that the petitioners and others have raised protest slogans and shown protest against the arrest of Seeman, their party leader. Raising slogans against the Government itself would not amount to commission of any offence, by dissenting and showing Protest is the Hallmark of Democracy, which is a fundamental right under Constitution of India.

6.The petitioners and others raised slogans against the arrest of Seeman. Admittedly in these cases, the occurrences took place in a public place, in public view, surprisingly no public or independent witness examined by the prosecution, which causes serious doubt on the veracity of the complaint. Further, this Court in the case of "Jeevanandham and others Vs. State Rep. by Inspector of Police and another reported in (2018) 2 LW CrI. 606" had clearly held that the police officials are not empowered to register a case under Section 188 IPC and the same is barred under Section 195 Cr.P.C. There is no material to show that there was any promulgation of prohibitory orders which was communicated to the public and there was any disobedience by the petitioner. Further, in consequence to the protest, the prosecution failed to show whether any trouble created, causing disruption to the public and vehicle movement. The respondent Police failed to follow the guidelines issued by this Court in Jeevanandham (Cited Supra). In several cases, this Court quashed the proceedings against the accused/protesters on similar ground.

7.In the result, the proceedings in Crime No.889 of 2018 on the file of the Inspector of Police, H8 Thiruvottriyur Police Station, Thiruvottriyur, Chennai is hereby quashed against the petitioners.



8. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

mp/rap

To

1. The Inspector of Police,
H8 Thiruvottiyur Police Station,
Thiruvottiyur, Chennai.
2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Xavier Felix, Advocate, S.R.No.3143

CRL.O.P.No.22067 of 2021

SSD(CO)
SU(18/02/2022)