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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.01.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CrI.O.P.No.21848 of 2021
and
CrI. M.P. No.11861 of 2021

Mr.A.G.Venkatachalam

... Petitioner/Accused

Versus

1.The State represented by
The Inspector of Police,
Anthiyur Police Station,
Erode District.
(Cr. No.335 of 2017)

2.Mr.M.Ananthakumar

... Respondents/Complainant/
Defacto Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records culminating in the S.T.C. No.1800 of 2021 pending on the file of the Judicial Magistrate No.I, Erode.

For Petitioner : Mr.B. Mohan

For Respondents: Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the proceedings in S.T.C. No.1800 of 2021, pending on the file of the Judicial Magistrate No.I, Erode as against the petitioner.

2. The case of the prosecution is that on 24.06.2017, the petitioner a party member of DMK conducted political meeting for celebration of Ex.CM.Dr.Kalingar Karunanidhi's 94th birthday violating prohibiting orders. Hence a case has been registered in Crime No.335 of 2017 for the offences under Sections 290, 291, 341 and 188 of IPC and the proceedings in S.T.C. No.1800 of 2021, pending on the file of the Judicial Magistrate No.I, Erode initiated against the petitioner.



3. The learned counsel appearing for the petitioner submitted that the Hon'ble Supreme Court of India has held that the right to freely assemble and right to freely express one's view are constitutionally protected rights under Part III and their enjoyment can be only in proportional manner through a fair and non-arbitrary procedure provided in Article 19 of Constitution of India. He further submitted that it is the duty of the Government to protect right of freedom of speech and assemble which is essential in a democracy. According to Section 195(1)(a) of Cr.P.C., no Court can take cognizance of an offence under Section 188 of IPC, unless the public servant has written order from the authority. Further he submitted that the petitioner or any other members never involved in any unlawful assembly and activities, there is no evidence that the petitioner or others wrongfully restrained anyone. Hence, he sought quashing of proceedings.

4. Per contra, the learned Additional Public Prosecutor submitted that the petitioner/Town Secretary of DMK political party organised a public meeting in commemoration of their leader's 94th Birthday. On 24.06.2017, between 6.00 p.m to 9.00 pm held the meeting in Anthiyur to Bargur State Highway SH 175, obstructing traffic in violation of permission granted by Deputy Superintendent of Police, caused public disturbance and free movement of traffic and there are specific allegations as against the petitioner to proceed with the trial. Further, he would submit that Section 188 of IPC is a cognizable offence and therefore it is the duty of the police to register a case. Though there is a bar under Section 195(a)(i) of Cr.P.C. to take cognizance for the offence under Section 188 of IPC, it does not mean that the police cannot register FIR and investigate the case. Further, the petitioner committed offences under Sections 290, 291 & 341 of IPC. During investigation, the respondent police visited the scene of occurrence, recorded the statements of witness present in the scene of occurrence, prepared Observation Mahazar, Rough Sketch, collected materials and filed Charge Sheet listing L.W.1 to L.W.19, documents and materials. Therefore, he vehemently opposed the quash petition and prayed for dismissal of the same.

5. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

6. On the submission of either side and on perusal of the final report, it is seen that the petitioner without following the conditions stipulated by the concerned authority in granting permission to hold public meeting conducted a political meeting for celebration of Ex.CM. Dr.Kalingar Karunanidhi's 94th birthday. Therefore, the respondent police levelled the charges



9. The learned counsel for the petitioner relied upon a judgement in Mahaboob Basha Vs. Sambanda Reddiar and others reported in 1994(1) Crimes, Page 477. He also relied upon a judgment in a batch of quash petitions, reported in 2018-2-L.W. (Crl.) 606 in Crl.O.P. (MD)No. 1356 of 2018, dated 20.09.2018 in the case of Jeevanandham and others Vs. State rep. by the Inspector of Police, Karur District, and this Court held in Paragraph-25, as follows :-

"25. In view of the discussions, the following guidelines are issued insofar as an offence under Section 188 of IPC, is concerned:

a) A Police Officer cannot register an FIR for any of the offences falling under Section 172 to 188 of IPC.

b) A Police Officer by virtue of the powers conferred under Section 41 of Cr.P.C will have the authority to take action under Section 41 of Cr.P.C., when a cognizable offence under Section 188 IPC is committed in his presence or where such action is required, to prevent such person from committing an offence under Section 188 of IPC.

c) The role of the Police Officer will be confined only to the preventive action as stipulated under Section 41 of Cr.P.C and immediately thereafter, he has to inform about the same to the public servant concerned/authorised, to enable such public servant to give a complaint in writing before the jurisdictional Magistrate, who shall take cognizance of such complaint on being prima facie satisfied with the requirements of Section 188 of IPC.

d) In order to attract the provisions of Section 188 of IPC, the written complaint of the public servant concerned should reflect the following ingredients namely;

i) that there must be an order promulgated by the public servant;

ii) that such public servant is lawfully empowered to promulgate it;

iii) that the person with knowledge of such order and being directed by such order to abstain from doing certain act or to take certain order with certain property in his possession and under his management, has disobeyed;

and

iv) that such disobedience causes or tends to cause;



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(a) obstruction, annoyance or risk of it to any person lawfully employed; or

(b) danger to human life, health or safety; or (c) a riot or affray.

e) The promulgation issued under Section 30(2) of the Police Act, 1861, must satisfy the test of reasonableness and can only be in the nature of a regulatory power and not a blanket power to trifle any democratic dissent of the citizens by the Police.

f) The promulgation through which, the order is made known must be by something done openly and in public and private information will not be a promulgation. The order must be notified or published by beat of drum or in a Gazette or published in a newspaper with a wide circulation.

g) No Judicial Magistrate should take cognizance of a Final Report when it reflects an offence under Section 172 to 188 of IPC. An FIR or a Final Report will not become void ab initio insofar as offences other than Section 172 to 188 of IPC and a Final Report can be taken cognizance by the Magistrate insofar as offences not covered under Section 195(1) (a) (i) of Cr.P.C.

h) The Director General of Police, Chennai and Inspector General of the various Zones are directed to immediately formulate a process by specifically empowering public servants dealing with for an offence under Section 188 of IPC to ensure that there is no delay in filing a written complaint by the public servants concerned under Section 195(1) (a) (i) of Cr.P.C.

10. In the case on hand, the First Information Report has been registered by the respondent police for the offences under Sections 290, 291, 341 & 188 of IPC. He is not a competent person to register FIR for the offences under Section 188 of IPC. As such, the First Information Report is liable to be quashed for the offences under Section 188 of IPC.

11. As regards other offences involving public nuisance and wrongful restrain, no public lodged any complaint against the petitioner. The de facto complainant is the Sub Inspector of Police attached with the respondent. Further no materials to



show that there was any obstruction, restraint for free movement of public having occasion to usage of public road. The meeting was a one day event hence, there is no repeat of any obstruction. The petitioner had obtained permission for the public meeting, at the most, it can be said that the venue and direction of meeting, changed violated. The respondent police not taken any steps to clear the obstruction, despite present in numbers. The witness listed are mostly police personnels, the other witnesses projected are shop vendors, who necessarily need the support of Police. In the case, the occurrence taken place on 24.06.2017 and case registered on the next day. It is almost 4 years now. The maximum punishment for the offences charged are six months imprisonment and fine. Therefore, continuation of further proceedings will serve no purpose. Hence, the final report cannot be sustained and it is liable to be quashed.

12. Accordingly, the proceedings in S.T.C. No.1800 of 2021 pending on the file of the Judicial Magistrate No.I, Erode, is quashed and the Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS-II)

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Sub Assistant Registrar

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To

1. The Judicial Magistrate No.I,
Erode.
- 2.-do-Thro Chief Judicial Magistrate,
Erode.
- 3.The Inspector of Police,
Anthiyur Police Station,
Erode District.
- 4.The Public Prosecutor,
High Court, Madras.

CrI.O.P.No.21848 of 2021
and
CrI. M.P. No.11861 of 2021

GPL (CO)
CB(02/02/2022)