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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.21466 OF 2021

AND

CRL.M.P.NOS.11595 OF 2021 & 245 OF 2022

1. V.Gunasekaran
2. P.Raghu
3. A.Velu
4. P.Babu
5. E.Velu
6. N.Balaraman
7. J.Babu

... Petitioners/Accused 1-7

Vs.

1. State Represented by,
The Inspector of Police,
K-4, Annanagar Police Station,
Chennai- 600040.

... 1st Respondent/Complainant

2. Gangan P,
The Sub-Inspector of Police,
K-4, Annanagar Police Station,
Chennai- 600040.

... 2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the Calender Case No.8280 of 2017, pending before the learned Vth Metropolitan Magistrate, at Egmore, Chennai in Cr.No.348 of 2017, as far as the petitioners are concerned and quash the same.

For Petitioner : Mr.M.Krishnamoorthy

For R1 : Mr.E.Raj Thilak,
Additional Public Prosecutor



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ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.8280 of 2017, on the file of the V Metropolitan Magistrate Court, Egmore, Chennai.

2.The case of the prosecution in brevity is that on 13.03.2017, at about 10.35 a.m., when the 2nd respondent/Sub Inspector of Police, attached to the 1st respondent Police during his official routine patrol duty along with other Police personnels, without obtaining any prior permission, the petitioners unlawfully assembled before the Fair Price Shop restrained the vehicles, shouting slogans and wrongfully restrained the consumers from buying the ration from the shop. When the Police intervened and insisted them to disperse, the petitioners failed to do so. Hence, an FIR in Crime No.348 of 2017, for offence under Sections 143, 341 and 188 IPC was registered against them, on completion of investigation charge sheet came to be filed before the learned V Metropolitan Magistrate, Egmore, Chennai and the same was taken on file as C.C.No.8280 of 2021, listing 5 witnesses as LW1 to LW5.

3.The learned counsel for the petitioners submitted that in this case, LW1 to LW5 are all public servants and no private person was examined and cited as witness during investigation. The case of the prosecution is that the petitioners assembled before the Fair Price Shop which is a public place and made protest for not providing ration articles. It is highly improbable that no public witness was present in the place of occurrence and no reason has been given for non examination of public witnesses. In this case, the FIR in Crime No.348 of 2017 was registered for offence under Section 143, 341 and 188 IPC. As per Section 188 IPC, only the public servant is authorized to lodge a complaint and Section 195 Cr.P.C is clear embargo as to how a complaint to be registered and investigated by the Police for offence under Section 188 IPC. In this case, there is no complaint from the public servant. Hence, the registration of the FIR its void ab initio and continuing the investigation for other offences is also not permitted.

4.The learned counsel for the petitioners further submitted that this Court in catena of judgments have clearly held that the police personnel are not empowered to register an FIR under Section 188 IPC. There is nothing to show that on the date of occurrence, there was any prohibitory order in force and whether that order was communicated in the prescribed manner is also not known. The learned counsel further submitted that this Court in the cases of "Madhan Mohan Versus The State and another in Cr1.O.P.Nos.23129 & 23127 of 2019" on the similar grounds,



quashed the proceedings against the accused. Further, in the case of "Jeevanandham and others Vs. State Rep. by Inspector of Police and another reported in (2018) 2 LW CrL. 606", had given an authoritative pronouncement regarding the cases to be registered and investigated under Section 188 IPC and also issued certain guidelines, which is violated in this case.

5.The learned counsel for the petitioners further submitted that the petitioners raised slogans and held demonstration against the Government for the ineffectiveness in distribution of ration articles, which cannot be construed as unlawful act. Right to Dissent is the Hallmark of Democracy, the petitioners only expressed their displeasure which is their fundamental right. Hence, he prayed for quashing of the proceedings against the petitioners.

6.The learned Additional Public Prosecutor appearing for the respondents submitted that in this case, a complaint was lodged by the 2nd respondent/the Sub Inspector of Police attached to the 1st respondent Police. When he was on patrol duty along with other Police personnels near Fair Price Shop, found the petitioners under the leadership of A1, had assembled and raised slogans against the Government and also caused disturbance to the public. Timely intervention of the respondents, further law and problem were averted. The petitioners without getting permission from the authorities concerned have formed themselves into an unlawful assembly restrained the others and caused public disturbance. On completion of investigation, charge sheet has been filed in this case.

7.Considering the rival submissions and on perusal of the materials this Court finds that the petitioners have only raised their objection with regard to the shortage and non supply of ration articles to the general public. The purpose for having a ration shop is to make available the essential items for the needy persons, at affordable price. The pulses and the palm oil are the daily cooking needs of the general public and for the shortage and non supply, they have shown their displeasure. Raising slogans against the Government itself would not amount to any commission of offence, which is a fundamental right under Constitution of India.

8.From the statement of the witnesses, it is seen that LW1 to LW5 present in the scene of occurrence and according to them, the petitioners raised slogans against the Government and with regard to shortage of non supply of ration articles, they did not do anything more. Admittedly in this case, the occurrence had taken place in the public place and view, 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 CrL. 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 any prohibitory order which was communicated to the public and there was any disobedience by the petitioners. Further, in consequence to the protest, the prosecution failed to show whether any trouble or injuries occurred. Thus, the respondent Police did not follow the guidelines issued by this Court in Jeevanandham (Cited Supra). In several cases, this Court quashes the proceedings against the accused/protesters on the similar ground.

9. In the result, the proceedings in C.C.No.8280 of 2017, on the file of the V Metropolitan Magistrate Court, Egmore, Chennai is hereby quashed against the petitioners. This Criminal Original Petition is allowed accordingly. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The V Metropolitan Magistrate Court,
Egmore, Chennai.
2. The Inspector of Police,
K-4, Annanagar Police Station,
Chennai - 600 040.
3. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.M.Krishnamoorthy, Advocate, S.R.No.2408

CrL.O.P.No.21466 of 2021

SSN(CO)
RLP(22/02/2022)