



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2022

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.24534 of 2021
and
Crl.M.P.Nos.13522 & 13523 of 2021

K.Magesh

...Petitioner/Accused

Vs.

1. The State Rep. by,
The Inspector of Police,
F-1, Chintadripet Police Station,
Chennai.
Crime No.164 of 2019.

...1st Respondent/Complainant

2. Raj Mohan,
Assistant Executive Engineer,
Flying squad (FST-NIGHT SHIFT) Officer,
Chepauk, Triplicane,
Chennai.

...2nd Respondent/Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records and quash the proceedings in C.C.No.1621 of 2020, pending before the learned XIV Metropolitan Magistrate Court, Egmore at Chennai.

For Petitioner : Mr.K.Karthik

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

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.1621 of 2020, on the file of the XIV Metropolitan Magistrate Court, Egmore, Chennai.

2.The case is that on 15.04.2019, at about 04.15 p.m., the 2nd respondent found the DMK party election office in ward No.62, at No.106/45, Guruvappa Street, Chinthathripet within 200 meter of polling centre, which is against the election rules and



regulations. Hence, a case came to be registered on the complaint of the 2nd respondent in Crime No.164 of 2019, for offence under Section 4A(1a) & 4B of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959, after completion of investigation, charge sheet was filed before the learned XIV Metropolitan Magistrate, Egmore, Chennai and taken on file as C.C.No.1621 of 2020, listing four witnesses LW1 to LW4.

3.The learned counsel for the petitioner submitted that in the complaint, there is no mention about the petitioner's name or presence of the petitioner in the election area. Having an election office with 200 meters of polling centre, no complaint can be lodged against any person. He further submitted that the petitioner has been falsely implicated in in this case without any proper enquiry and without verifying his involvement. In this case, no public witness was examined and no photograph was produced to show whether the election office was situated within 200 meters of polling centre. In the statement of LW2 and LW3, who are Sub Inspector of Police and Grade-I Constable attached to the respondent Police, they stated that during investigation, the involvement of the petitioner was found, hence, he is arrayed as accused. But, nowhere in their statement, what is the enquiry they have conducted and through whom, the petitioner being the reason for putting up the election office within prohibited area, are found. He further submitted that in this case, the complaint was lodged on 15.04.2019 and the statement of witnesses were recorded on the same day. In this case, there is no photograph or any mahazar prepared to show the presence of the election office within the prohibited area of 200 meters of polling centre. Hence, he prayed for quashing of the proceedings against the petitioner.

4.The learned Additional Public Prosecutor appearing for the 1st respondent Police submitted that in this case, the 2nd respondent, who is the Assistant Executive Engineer, Chepauk, Triplicane, Chennai, was acted as Flying squad for election work. On 15.04.2019, he found the election office within the 200 meters of polling centre. On the complaint of the 2nd respondent, a case was registered by the 1st respondent Police. Immediately, LW4 visited the scene of occurrence, recorded the statement of witnesses and on completion of investigation, filed the charge sheet before the Court. The points raised by the learned counsel for the petitioner are to be decided only during trial and not in this quash petition.

5.This Court considered the rival submissions and perused the materials available on record.

6.It is seen that on the complaint of LW1, the 2nd respondent herein, a case was registered. The case is that the



petitioner being a member of DMK political party had put up election office within 200 meters of polling centre. There is no material to show the distance between the election office and the polling centre and how it has been measured and no observation mahazar prepared and no photograph taken to confirm the same. Further, putting up election office will no way attract the provision of Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959.

7. In view of the above, the continuation of the proceedings in C.C.No.1621 of 2020, on the file of the XIV Metropolitan Magistrate Court, Egmore, Chennai, would amount to abuse of process of law and the same is liable to be quashed and, is quashed. This Criminal Original Petition is, accordingly, allowed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The XIV Metropolitan Magistrate Court,
Egmore, Chennai.
2. The Inspector of Police,
F-1, Chintadripet Police Station,
Chennai.
3. The Public Prosecutor,
High Court, Madras.

+1cc to M/s.K.Karthik, Advocate, S.R.No.7061

Cr1.O.P.No.24534 of 2021

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