



IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 07.01.2022
CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.26006 of 2021

and

Crl. M.P. Nos.14377 & 14378 of 2021

- 1.Mr.Suba Veerapandian
- 2.Mr.Tameem Ansari @ Thamimum Ansari
- 3.Mr.Shareef
- 4.Mr.V.Gowthaman
- 5.Mr.Highther Ali @ Hyder Ali
- 6.Mr.Seeralan

... Petitioners

Versus

- 1.The State represented by
The Sub Inspector of Police,
F-1, Chintadripet Police Station,
Chennai.
(Cr. No.624 of 2019)

- 2.Mr.Kumar

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C. No.17/2021 pending before the Additional Special Court No.II for Trial of Cases related to members of parliament and members of legislative assembly of Tamil Nadu, Chennai and quash the same.

For Petitioner : Mr.L.Abdul Basith
For Respondents: Mr.Hasan Mohammed Jinnah
State Public Prosecutor
Assisted by Mr.E.Raj Thilak
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the C.C. No.17/2021 pending before the Additional Special Court No.II for Trial of Cases related to members of parliament and members of legislative assembly of Tamil Nadu, Chennai.



2. The case of the prosecution is that on 12.12.2019 at about 16.45 hours, when the defacto complainant was on a regular patrol found that the petitioner along with other accused persons near Tharapore Towers, Chintadripet, held protest against Citizenship Amendment Act enacted by the Government of India without any prior permission from the concerned authority and caused disturbance to the public. Hence, they were arrested and a case against the petitioners/A1 to 3 & A6 -8 in Crime No.624 of 2019 for offence under Sections 143, 285 and 341 of IPC and Section 41 (VI) of the Tamil Nadu City Police Act, 1888, came to be registered.

3. The learned counsel for the petitioners submitted that the petitioners are social activist and have been raising voice for the public cause and public welfare, whenever injustice and inaction of the government machineries occurred. In order to draw the attention of the Central and State Governments, the petitioners along with several others had protested against Citizenship Amendment Act enacted by the parliament. The learned counsel further submitted that the Hon'ble Supreme Court held that the right to freely assemble and also right to freely express one's view or constitutionally protected rights under Part III and their enjoyment can be restrained 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 the rights of freedom of speech and assemble, which are essential to a democracy. The petitioners or any other members had never involved in any unlawful assembly and there is no evidence that the petitioner or others restrained anybody. Since, there is no offence made out in the charge sheet, having no other option except to file this quash petition. Therefore, he sought for quashing the trial against the petitioners.

4. In support of his submissions, the learned counsel for the petitioner relied upon the decision of the Hon'ble Supreme Court in the case of Pepsi Foods vs. Special Magistrate and others (1998 SCC (Cr1) 1400), and the decisions of this Court in A.Santhos Yadav Vs. Bar Council of Tamil Nadu and ors (2015 (4) CTC 317), State of Haryana and others V. Bhajan Lal and Others (1992 SCC (Cr1) 426).

5. The learned Additional Public Prosecutor appearing for the respondent Police submitted that in this case on 12.12.2019, the petitioners and other protesters assembled near Tharapore Towers, Chintadripet and participated in a Dharna against the Citizenship Amendment Act enacted by the Government of India without prior permission, held protest, caused nuisance to the public and violated the prohibitory orders passed by the police officers. Without following the protocols, the petitioners and others assembled held protest, disturbed the traffic and public movement. Despite warning,



the petitioners and others refused to disperse, on the other hand, they raised slogans and caused disturbance to the public.

6. Considering the rival submissions and on perusal of the materials, it is admitted fact that the petitioners and others raised protest which is their fundamental right. In this case, no public lodged any complaint and no public got affected, due to the protest held by the petitioners and others. Hence, this Court finds that the petitioners and others have only raised slogans and shown protest against Citizenship Amendment Act enacted by the Government of India. The petitioners were fighting for the religious minority rights.

7. It is seen that the petitioners herein to safeguard the guaranteed fundamental rights in the Constitution of India, held protest. From plain reading of the allegations in the FIR, the allegations are general in nature and no specific allegations are made against the petitioners to attract the said provisions. Raising slogans and showing protest itself would not amount to commission of offence. Showing Protest is the Hallmark of Democracy, which is a fundamental right guaranteed under the Constitution of India.

8. 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 petitioners. Further, in consequence to the protest, the prosecution failed to show whether any trouble occurred. The learned counsel for the petitioners relied upon the citation of Hon'ble Apex Court in "Himatlal K. Shah Versus Police Commissioner, Ahemdabad", wherein it is held that

"..... State cannot by law abridge or take away the right of assembly by prohibition assembly on every public street or public place. The State can only make regulations in aid of the right of assembly of each citizen and can only impose reasonable restrictions in the interest of public order."

In several this type of cases, this Court quashed the investigation against the accused/protesters on similar ground.

9. In the result, this Criminal Original Petition is allowed and C.C. No.17/2021 pending before the Additional Special Court No.II for Trial of Cases related to members of parliament and members of legislative assembly of Tamil Nadu, Chennai is quashed as against the petitioners. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar



To

1..Additional Special Court No.II for Trial of Cases
related to members of parliament and members
of legislative assembly of Tamil Nadu, Chennai.

2.The Sub Inspector of Police,
F-1, Chintadripet Police Station, Chennai.

3.The Public Prosecutor,
High Court, Madras.

+1 cc to Mr.L.Abdul Basith, Advocate Sr.NO. 1916
Crl.O.P.No.26006 of 2021
and
Crl. M.P. Nos.14377 & 14378 of 2021

UM(CO)
A.SK(27.01.2022)