

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.No.25399 of 2021

and

Crl.M.P.Nos.14072 & 14073 of 2021

1.Haroon Rasith
2.Thaimiya
3.Abdullah
4.Jahir Hussain
5.Thavud Jaffar @ Javid

... Petitioners/Accused 1 to 5

Versus

State Rep by its,
The Inspector of Police,
F-2, Egmore Police Station,
Chennai.
(Cr.No.166 of 2018).

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.6040 of 2018 pending on the XIV Metropolitan Magistrate Court, Egmore, Chennai and quash the same as illegal.

For Petitioners : Mr.I.Abdul Basith

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

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.6040 of 2018, pending on the file of the XIV Metropolitan Magistrate Court, Egmore, Chennai (Trial Court).

2.The gist of the case is that on 03.04.2018, at about 03.30 p.m., when the respondent Police along with his team were on patrol duty, near Egmore Railway Station, 85 persons

belonging to Manithaneyya Jananayaga Party under the leadership of 1st petitioner had assembled and raised slogans against the Central and State Government of Tamil Nadu for Non forming of Kaveri Management Board, without getting any prior permission. When they were asked to disperse and not to create any law and order problem, they failed to do so. Hence, they were arrested in the spot by the respondent Police and a case in Crime No.166 of 2018 was registered, for offence under Sections 143, 188, 353 and Section 41 of the Tamil Nadu City Police Act, 1888. After completion of investigation, charge sheet was filed before the trial Court and the same was taken on file as C.C.No.6040 of 2018, for offence under Sections 143, 353, Section 41 of the Tamil Nadu City Police Act, 1888 and Section 7(1)(a) of the Criminal Law Amendment Act, 2005, listing 7 witnesses as LW1 to LW7, as against which, the present Criminal Original Petition.

3.The learned counsel for the petitioner submitted that it is not the case that the petitioners and other accused blocked the free movement of traffic and caused any inconvenience to the public. He further submitted that out of seven witnesses, LW1 to LW4 & LW7 are police personnels attached to the respondent Police Station. LW5 and LW6, who are witnesses to the Observation Mahazar and Rough Sketch, are obliging witnesses to the Police. It is highly improbable that no public had come to lodge a complaint, which would prove the fact that the respondent Police projected a false case against the petitioners. 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. 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 petitioners restrained anybody.

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 Crl.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 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.

5.The learned Additional Public Prosecutor appearing for the respondent Police submitted that when the respondent Police along with other Police were on patrol duty, near Egmore Railway Station, 85 persons belonging to Manithaneya Jananayaga Party under the leadership of 1st petitioner had assembled and raising slogans against the Central and State Government of Tamil Nadu for Non forming of Kaveri Management Board, without getting any prior permission. When they were asked to disperse and not to create any law and order problem, they failed to do so. Hence, the respondent Police has registered a case against the petitioners and other accused and examined the witnesses and after completion of investigation, filed the charge sheet before the trial Court. The trial Court, on perusal of the charge sheet, finding prima facie material against the accused, had taken the case on file and issued summons to the petitioners. Therefore, the points raised by the petitioners are to be decided only during trial and not in this petition and he prayed for dismissal of this quash petition.

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

7.In this case, LW1 to LW4 & LW7 all are Police personnels and no independent person or public has been examined as witness. LW5 and LW6 are obliging witnesses to the Police. All the statement of witnesses are parrot like version. Showing protest and raising slogans without any disturbance to public and free movement of traffic, is permissible in law. Right to Dissent is the Hallmark of Democracy, the petitioners and other accused only expressed their displeasure which is their fundamental right. There is no material to show promulgation of any prohibitory order which was communicated to the public and there was any disturbance by the petitioner.

8.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, in consequence to the protest, the prosecution failed to show whether any trouble injuries occurred. Thus, the allegations made in the charge sheet, even if taken at face value and accepted in entirety do not prima facie constitute any offence or make out a case against the petitioners.

9.In view of the above, the proceedings in C.C.No.6040 of

2018, on the file of the XIV Metropolitan Magistrate Court, Egmore, Chennai, is hereby quashed against the petitioners and also against other accused, who are similarly placed. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS-II)

//True Copy//

Sub Assistant Registrar

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To

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

+1cc to Mr.I.Abdul Basith, Advocate, S.R.No.210

CRL.O.P.No.25399 of 2021

SSV(CO)
SU(20/01/2022)