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Crl.O.P.No.18446 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.08.2023

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THE HONOURABLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.No.18446 of 2023

and

Crl.M.P.Nos.12283 & 12284 of 2023

1.Vignesh
S/o.Vinayagam

2.Vijaya
W/o.Rajendran

3.Nithishkumar
S/o.Ethirajan

4.Deepika
D/o.Ethirajan

5.Divya
W/o.Janakiramprasad

6.Geetha
W/o.Vinayagam

... Petitioners

Vs.

1.The State represented by
The Inspector of Police,
F-2, Egmore Police Station,
Chennai.
Crime No.144 of 2021

2.G.Ayyanar

... Respondents



Crl.O.P.No.18446 of 2023

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the entire records pertaining to S.T.C.No.1041 of 2021 on the file of Metropolitan Magistrate XIV, Egmore, Chennai and quash the same in respect of petitioners concerned.

For Petitioners : Mr.B.Kumarasamy

For Respondents : Mr.A.Gopinath
Government Advocate [Crl.side] [R1]

ORDER

This Criminal Original Petition has been filed seeking to quash the proceedings in S.T.C.No.1041 of 2021 on the file of Metropolitan Magistrate XIV, Egmore, Chennai.

2. The case of the prosecution is that on 08.04.2021 at about 04.40 hours, the petitioners and others are said to have gathered opposite to the police station and they were abusing each other in filthy language and disturbing the peace and tranquility in that area. Based on the complaint given by the Sub-Inspector of Police, a First Information Report came to be registered in Crime No.144 of 2021 on the file of first respondent for offence u/s.160 IPC. On completion of investigation, the final report was filed before the Court below and it was taken on file in S.T.C.No.1041 of 2021 for offence u/s.160 IPC.



3. Heard Mr.B.Kumarasamy, learned counsel for petitioner and Mr.A.Gopinath, learned Government Advocate [Crl.side] appearing for first respondent.

4. On carefully reading the allegations made in the final report and also the statement of witnesses, it is seen that the parties were hurling verbal abuse against each other in front of the police station and were trying to attack each other. The issue to be considered is as to whether an offence has been made out by satisfying the ingredients u/s.159 IPC.

5. This Court had an occasion to deal with the scope of Section 159 IPC in *Nagarajan v. State [Crl.O.P.[MD] No.17260 of 2018, dated 27.09.2018*, wherein this Court has held as follows:

“3.The learned counsel for the petitioners relied upon the following judgments in order to substantiate the points raised by him. The first judgment relied upon by the learned counsel for the petitioners is reported in A.I.R 1938 MADRAS 924 in P.Rami Reddy and others vs. Chintha Chinna Narasi Reddy. The relevant portions of the judgment is extracted here under:

“....I am of opinion that fighting connotes necessarily a contest or struggle for mastery between two or more persons against one another. A struggle or a contest necessarily implies that there are two sides each of which is trying to obtain the mastery, so that unless there is some violence offered or threatened against one another, there



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CrI.O.P.No.18446 of 2023

could be no fight but only a mere assault or beating. In these circumstances, I am prepared to follow the view adopted by Horwill J. in the connected case and find that there was no fighting in the present case. It was merely a case of beating by members of one party of certain members of another party for which no doubt they could have been charged and punished, but as the prosecution deliberately chose to amend the charge, and rest their case entirely on the charge of affray, the case must stand or fall by what the prosecution has done. The offence of affray not having been established, the petitioners were entitled to be acquitted of that charge. Their convictions and sentences under S.160, I.P.C, are therefore set aside and they are acquitted”...

4. The second judgment that is relied upon by the learned counsel for the petitioners is reported in 2007 CRI. L.J. 4747 in Pushpa & Ors. V. Ravi & Ors. The relevant portions of the judgment is extracted here under:

“4.To constitute an offence under Section 160 IPC, three ingredients must be satisfied:

“A reading of Section 159 IPC would clearly indicate that in order to bring home the guilt of the accused for an offence of affray, the prosecution should satisfy the three essentials. Firstly, fighting must be between two or more persons. Secondly, fighting must take place in a public place, and thirdly, such fighting must also result in disturbance of public peace. In the absence of even one of these ingredients, it cannot be stated that there was either an affray or the accused facing the trial, should be held responsible.”

5.The third judgment that is relied upon by the learned counsel for the petitioners is reported in 1989 CRI. L. J. 2080 in Gadadhar Guru and another v. State of Orissa, Opposite Party. The relevant portions of the judgment is extracted here under:

“3.An offence of affray in essence consists of three ingredients, the first being fighting by two or more persons, secondly, the fighting must take place in a



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Crl.O.P.No.18446 of 2023

public place and thirdly such fighting must also result in disturbance of the public peace. Only if such ingredients are satisfied an offence of affray can be said to have occasioned for which the persons causing the same would be responsible. The learned S.D.J.M on an analysis of the evidence came to the conclusion that the two groups of petitioners had fought with each other on the village Danda which was a public place and thereafter observed that since the fight was at such a place, it was natural that due to the fight annoyance would have been caused in the locality and being of such view, he convicted the petitioners.

4. Even if the conclusions reached by the learned S.D.J.M as regards mutual fight between the two groups and that the place of the fight was the village Danda are upheld, yet the conclusion reached that the fight must have necessarily caused annoyance to the public and hence satisfied the third ingredient of S.159, I.P.C would not be justified.

5. In the first place annoyance to public, if at all, is not necessarily also disturbance of public peace which is more pervasive and of wider reach. In a prosecution under S.159, I.P.C there must be positive evidence of public peace having been disturbed which would mean that by the action of the accused the even tempo of life of the public was disturbed resulting in affecting the peace and tranquility of the locality. No such evidence has admittedly been led. It was observed in (1962) 1 Cri LJ 339 (Ker), Podan v. State of Kerala, that mere causing inconvenience to the public is not disturbance of public peace the two being entirely different notions.

6. In the second place, there is also no conclusive evidence that because of the fight any annoyance has resulted to the public.



7. In view of such fact, it has to be held that the charge under S.160, I.P.C has not been established against the petitioners and therefore the conviction is liable to be set aside.”

5.The judgments relied upon by the learned counsel for the petitioners, squarely applies to the facts of this case. There is no averment in the complaint that the dispute between the two groups had resulted in the disturbance of the public peace. As held by the Hon'ble Orrisa High Court, merely because there is a fight between two parties, that cannot give rise an automatic presumption that it has resulted in disturbance of the public peace. This Court is convinced that the F.I.R registered against the petitioners is unsustainable and the same is deserves to be quashed by this Court, in exercise of its jurisdiction under Section 482 of Cr.P.C.”

6. In the instant case, it is seen that there was fight between two parties and there is nothing to show that it had disturbed the public peace in that area. A mere disturbance caused to the public is not enough to satisfy the ingredient that there was disturbance to the public peace. It is not a matter of presumption and it has to be established based on the materials placed before the Court. This important ingredient has not been satisfied in this case.

In the light of the above discussion, this Criminal Original Petition is allowed and the proceedings in S.T.C.No.1041 of 2021 on the file of

Metropolitan Magistrate XIV, Egmore, Chennai, is hereby quashed.



Crl.O.P.No.18446 of 2023

Consequently, connected miscellaneous petitions are closed.

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18.08.2023

Speaking Order/Non-speaking Order

Index :Yes/No

Neutral citation: Yes/No

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To

1.The Metropolitan Magistrate XIV,
Egmore, Chennai.

2.The Inspector of Police,
F-2, Egmore Police Station,
Chennai.
Crime No.144 of 2021

3.The Public Prosecutor,
Madras High Court.

N.ANAND VENKATESH, J



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