



Crl.O.P.No.7407 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	24.07.2024
Delivered on	29.07.2024

CORAM

THE HONOURABLE MR.JUSTICE VIVEK KUMAR SINGH

Crl.O.P.No.7407 of 2019
and
Crl.M.P.No.4102 of 2019

D.Raja

... Petitioner

Vs.

State rep. by
The Deputy Superintendent of Police,
Central Bureau of Investigation,
Special Crime Branch,
III Floor, A-Wing, Rajaji Bhavan,
Besant Nagar, Chennai-600 090.

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, 1973, to call for the records in P.R.C.No.8 of 2010 on the file of the learned Chief Metropolitan Magistrate, Chennai and to quash all the proceeding as against the petitioner.

For Petitioner	: Mr.R.John Sathyan, Sr. Counsel for Mr.Sreenivasan
For Respondent	: Mr.K.Srinivasan Spl. Public Prosecutor for CBI



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ORDER

This petition has been filed by the petitioner seeking to quash the proceedings pending against him in P.R.C.No.8 of 2010 on the file of the learned Chief Metropolitan Magistrate, Chennai.

2. The brief facts of the case is as follows:-

On 19.02.2009, the higher officials of Chennai City Police on preventive measure, had deployed police force in the premises of Madras High Court to give protection to Dr.Subramanian Swamy, considering the earlier scuffle that took place on 17.02.2009 when he attended the Court and during the course of the day, the police made attempts to arrest the advocates, who said to have attacked Dr.Subramanian Swamy on 17.02.2009. At about 2.00 pm., around 150 lawyers, who were to be arrested instead of their surrender gathered near B2-Esplanade Police Station and demanded the arrest of Dr.Subramanian Swamy for abusing some lawyers in the name of their caste. Due to this, there was pandemonium and pelting of stones and also some lawyers set the police station ablaze. Hence, a case was registered for the alleged offences under Sections 120B



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r/w. Sections 147, 148, 149, 323, 325, 332, 333, 353, 436 and 450 of IPC and Section 3(1) and 4 of the TN (Prevention of Destruction and Loss) Act by the State police and on the direction of this Court, investigation was taken over by the CBI and on completion of the same, a charge sheet was filed by them against 32 lawyers and the petitioner herein has been arrayed as A28 in the said case, which was taken on file by the learned Chief Metropolitan Magistrate, Chennai in P.R.C.No.8 of 2010.

3. Aggrieved over the same, the present Criminal Original Petition was filed by the petitioner.

4. Heard Mr.R.John Sathyan, learned Senior Counsel for the petitioner, as well as Mr.K.Srinivasan, learned Special Public Prosecutor for the respondent/CBI.

5. The learned Senior counsel for the petitioner submitted that the petitioner, who is a practicing advocate, had been a junior under the Hon'ble Mr. Justice R.Reghupathy and has been in the profession for more than 20 years and has also served as an Additional Government Pleader during the period 2012-14 & 2017



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-21 and also was the Standing Counsel for the Corporation of Chennai during the year 2011-12. He further submitted that the case was originally registered by the Inspector of Police, B-4 High Court Police Station in Crime No.15 of 2009, wherein 5 named advocates along with 150 other unnamed advocates were mentioned as accused. It is pertinent to note that the petitioner's name was not found place in the First Information Report and out of the alleged 150 advocates, the petitioner was arbitrarily picked during the course of the investigation by the CBI and was made as an accused in the final report in P.R.C.No.8 of 2010 on the file of the Chief Metropolitan Magistrate, Chennai. Moreover, the allegation levelled against the petitioner is that he along with the charge-sheeted persons gathered themselves into an unlawful assembly at about 3:45 p.m on 19-02-2009 and attacked the police by pelting stones which overt act has not been substantiated by any of the witness. Further, the petitioner's name was not found in the First Information Report and there is nothing to prove the fact that the petitioner had even participated in the previous protest. He also submitted that the name of the petitioner does not find place in any other incident that either preceded or succeeded the incident in focus. In furtherance, he contended that the petitioner has been



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implicated on the strength of the statement of the witness, viz., W-26 / C. Jayakodi, the then Inspector of Police, B-2 Esplanade Police Station and the first informant therein.

6. Continuing his arguments, the learned Senior counsel drew the attention of this Court that the said W26 was examined on 13-03-2009 and on 02-06-2009 and again on 15-06-2009 but however, she did not identify the petitioner but only on 05-10-2009, through photograph and video footage from the press, the petitioner has been identified by her. Merely because of his presence in the photograph and videos, the petitioner has been implicated in this case without any overt act.

7. At this juncture, it is relevant to point out that the witnesses, namely, W-171/ V. Kannadasan, W-182/M. Velmurugan (Advocate), W-202/P. Rathinavel (SUN TV Reporter) have identified the petitioner from the pictures released in the media and the SUN TV news footage but however, none of the above witnesses have attributed any overt act on him apart from identifying the petitioner and merely speaking about his presence. The above fact implies that the petitioner has not involved in any overt act which is also



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affirmed by the respondent in their status report filed before this Court. He submitted that it is obvious that there was number of good lawyers stranded in the mayhem and few among them had gone to escort the Honorable Judges of this Court and the petitioner herein is one such lawyer, who happened to be present at the alleged occurrence, accompanying the Honorable Judges, who had gone to the place of incident to control the situation and urged that the petitioner has not committed any overt act as alleged by the respondent.

8. While concluding his argument, the learned Senior counsel submitted that the petitioner is a practicing advocate and has been falsely implicated in the final report for his mere presence in the place of incident which made him to lead his life for the past 15 years in mental trauma without any fault and hence, prayed to allow the petition.

9. Per contra, the learned Special Public Prosecutor appearing on behalf of the respondent/ CBI submitted that as per the report of the respondent herein, as it is seen that the petitioner herein was identified by the witnesses, namely, C.Jayakodi, the Inspector of



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Police, B2, Esplanade Police Station, Chennai, V.Kannasadan, Special Public Prosecutor, M.Velmurugan, Secretary of Madras High Court Advocate Association and P.Rathinavel, Sun TV reporter from the photographs of Anandavikatan and visuals of Sun TV in the untoward incident that took place on 19.02.2009 among the gathered advocates. Hence, the case has been registered against the petitioner herein.

10. Considered the submissions made on either side and also perused the materials available on record.

11. On a bare perusal of the case, it is seen that the petitioner herein was present among the gathered advocates during the occurrence of the untoward incident that took place on 19.02.2009. However, he was identified only through photographs and visuals of the media by the aforesaid witnesses. It is pertinent to note that none of the witnesses articulated any overt act on the petitioner as alleged by the respondent. Mere presence of the petitioner in the gathering and that too, identified only through photographs and visuals cannot be taken into account for the commission of the alleged offences. Moreover, his name was not found in the FIR and



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only after investigation by the respondent/CBI, that too his presence was identified through photographs and visuals of the media, he has been implicated as an accused in the said case, is unsustainable.

12. Considering the facts and circumstances of the case and also taking note of the submissions on either side, this Court is of the opinion that the proceedings pending against the petitioner in this case, is liable to be quashed. Accordingly, the proceedings pending against the petitioner herein in P.R.C.No.8 of 2010 on the file of the learned Chief Metropolitan Magistrate, Chennai, is hereby quashed.

13. In the result, the Criminal Original Petition stands allowed. Consequently, the connected Miscellaneous Petition is closed.

29.07.2024

NCC : Yes/No
Index : Yes/No
Order : Speaking/Non Speaking

DP

8/11



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Note: Issue Order copy on 30.07.2024

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To

- 1.The Chief Metropolitan Magistrate,
Chennai.
- 2.The Deputy Superintendent of Police,
Central Bureau of Investigation,
Special Crime Branch,
III Floor, A-Wing, Rajaji Bhavan,
Besant Nagar, Chennai-600 090.
- 3.The Public Prosecutor,
Madras High Court, Chennai.



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VIVEK KUMAR SINGH, J.

DP

ORDER MADE IN
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and
Crl.M.P.No.4102 of 2019

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