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CRL.O.P.No.21568 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.11.2024

CORAM : MR. JUSTICE N.SESHASAYEE

CRL.O.P.No.21568 of 2023
and Crl.M.P.Nos.14869 and 14870 of 2023

S.Diwakar

... Petitioner

Vs.

STATE Represented by
The Deputy Superintendent of Police
Central Bureau of Investigation
RC/01/S/2009, Special Crime Branch
III Floor, A-Wing, Rajaji Bhavan
Besant Nagar, Chennai 600 090

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. to call for the records in P.R.C.No.08 of 2010 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai and quash all proceedings as against the petitioner.

For Petitioner : Mr.N.L.Raja, Senior Counsel
Assisted by M/s.V.Senthil Kumar

For Respondent : Mr.K.Srinivasan
Special Public Prosecutor (C.B.I.)



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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, Egmore, Chennai.

2. The brief facts of the case are as follows:

- a) 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 an earlier scuffle that took place when he attended the Court on 17.02.2009. During the course of the day, the police made attempts to arrest the advocates, who are said to have attacked Dr.Subramanian Swamy on 17.02.2009.
- b) At about 2.00 p.m. around 150 lawyers, who were to be arrested, 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



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pelting of stones and also some lawyers set the police station ablaze. Hence, a case was registered against them for the alleged offences under Section 120B r/w. Sections 147, 148, 149, 323, 325, 332, 333, 353, 436 and 450 of I.P.C. and Sections 3(1) and 4 of the Tamil Nadu Public Property (Prevention of Damage and Loss) Act, 1992 by the State police.

c) On the direction of this Court, investigation was taken over by the C.B.I and on completion of the same, a charge sheet was filed by it against 32 lawyers, in which the petitioner herein was arrayed as A11 and the same was taken on file by the learned Chief Metropolitan Magistrate, Egmore, Chennai in P.R.C.No.8 of 2010.

3. Aggrieved over the same, the present Criminal Original Petition was filed by the petitioner to quash the final report as against the petitioner.

4. Heard Mr.N.L.Raja, the learned Senior Counsel for the petitioner, as well as Mr.K.Srinivasan, the learned Special Public Prosecutor for the respondent / C.B.I.



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5. The learned Senior counsel appearing for the petitioner submitted that :

- a) The petitioner is a practising advocate and has been serving in multiple capacities as Standing Counsel, Additional Government Pleader, Special Government Pleader and was also the office bearer of Bar Association. His credentials are as below :

<i>Period</i>	<i>Post held by the petitioner</i>
2007-2009	Executive Committee Member of the Madras High Court Advocates Association
2011-2012	Standing Counsel for TNHB
2012-2016	Additional Government Pleader
2012 - 2016	Standing Counsel for Salem Corporation
2013-2018	Chairman for Madras Advocates Co-operative Society Limited
2016 - 2018	Special Government Pleader
2021 - 2024	Central Government Senior Panel Counsel

- b) While so, the case was originally registered by the Inspector of Police, B2 High Court Police Station in Crime No.15 of 2009, wherein 5 named advocates along with 150 other unnamed advocates were mentioned as accused. The petitioner's name was not in the First Information Report and the petitioner was arbitrarily picked during the course of the investigation by the



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C.B.I 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, Egmore, Chennai.

- c) The allegation levelled against the petitioner is that on 19.02.2009 at about 3.45 p.m, he along with the charge-sheeted persons gathered themselves into an unlawful assembly, and attacked the police by pelting stones but no witness has spoken of this overt act. There is therefore, nothing to prove the fact that the petitioner had even participated in the previous protest. The name of the petitioner does not find a place in any other incident that either preceded or succeeded the present incident. Furthermore, the petitioner has been implicated purely on the strength of the statement of the witness, viz., LW26 / C. Jayakodi, the then Inspector of Police, B2 Esplanade Police Station and the first informant therein.

6. As per the final report, only the following witnesses speak about the involvement of the petitioner, they are :



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<i>Rank of the witness in the final report</i>	<i>Name of the witness</i>
LW-26	C.Jayakodi (Inspector)
LW-182	M.Velmurugan (Secretary / MHAA)
LW-197	P.Angusamy (S.I/ I.S)
LW-202	P.Rathinavel (SUN TV Reporter)
LW-205	M.Senthilkumar (Photographer of Anandavikatan)
LW-206	K.Karthikeyan (Photographer of Anandavikatan)

Of the above six, L.W.205 and L.W.206 do not even identify the petitioner, whereas the rest of the witnesses identified him either from video footage or from photographs in the magazine, but do not speak to any overt act. Therefore, the petitioner has been falsely implicated.

7. Per contra, the learned Special Public Prosecutor appearing on behalf of the respondent / C.B.I would submit that as argued by the counsel for the petitioner, only the above named six witnesses speak to the involvement of the petitioner but as has been argued, only four identified him from the photographs or video footage, and the other two did not even identify him. And even those who had identified him did not speak anything about the overt act of the petitioner in the crime alleged.



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8. This Court considered the submissions made on either side and also perused the materials available on record and on satisfied itself about the correctness of the statement made at the Bar, necessarily it has to quash the final report laid as against the petitioner. Accordingly, this criminal original petition is allowed and the proceedings pending against the petitioner herein in P.R.C.No.8 of 2010 on the file of the learned Chief Metropolitan Magistrate, Egmore, Chennai, is hereby quashed. Consequently, the connected miscellaneous petitions are closed.

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Index : Yes / No
Neutral Citation



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N.SESHASAYEE, J.

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To

1.The Deputy Superintendent of Police
Central Bureau of Investigation
RC/01/S/2009, Special Crime Branch
III Floor, A-Wing, Rajaji Bhavan
Besant Nagar, Chennai 600 090

2.The Chief Metropolitan Magistrate
Egmore
Chennai

3.The Public Prosecutor
C.B.I. Cases
High Court of Madras
Chennai 600 104

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