

IN THE HIGH COURT OF JUDICATURE AT MADRAS

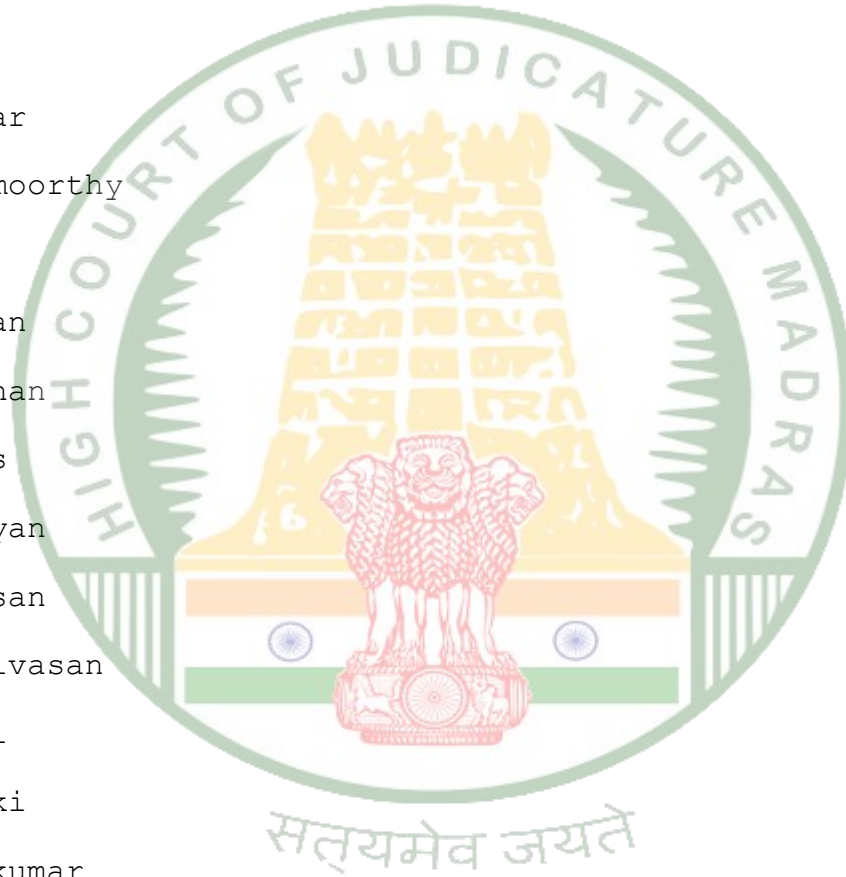
DATED : 13.12.2019

CORAM

THE HONOURABLE Mr.JUSTICE M.DHANDAPANI

Crl.O.P.No.5446 of 2011
and
M.P.Nos.1 & 2 of 2011

- 1.Anandan
- 2.Sivakumar
- 3.Krishnamoorthy
- 4.Joel
- 5.Jayaraman
- 6.Saminathan
- 7.Mohandos
- 8.subbarayan
- 9.Venkatesan
- 10.K.Srinivasan
- 11.Perumal
- 12.Sambanki
- 13.Vinothkumar
- 14.Jaisankar
- 15.David Chellappa
- 16.Charles
- 17.Anbalagan
- 18.Ashok Kumar
- 19.Jayakumar



WEB COPY

20.Ramamurthy

21.Rajendran

22.Govindaraj

23.Ravichandran

24.Ettiappan

25.Gopi

26.Krishnan

27.Santhanakrishnan

28.Pandian

29.Chellasami Nadar

30.Nagaraj

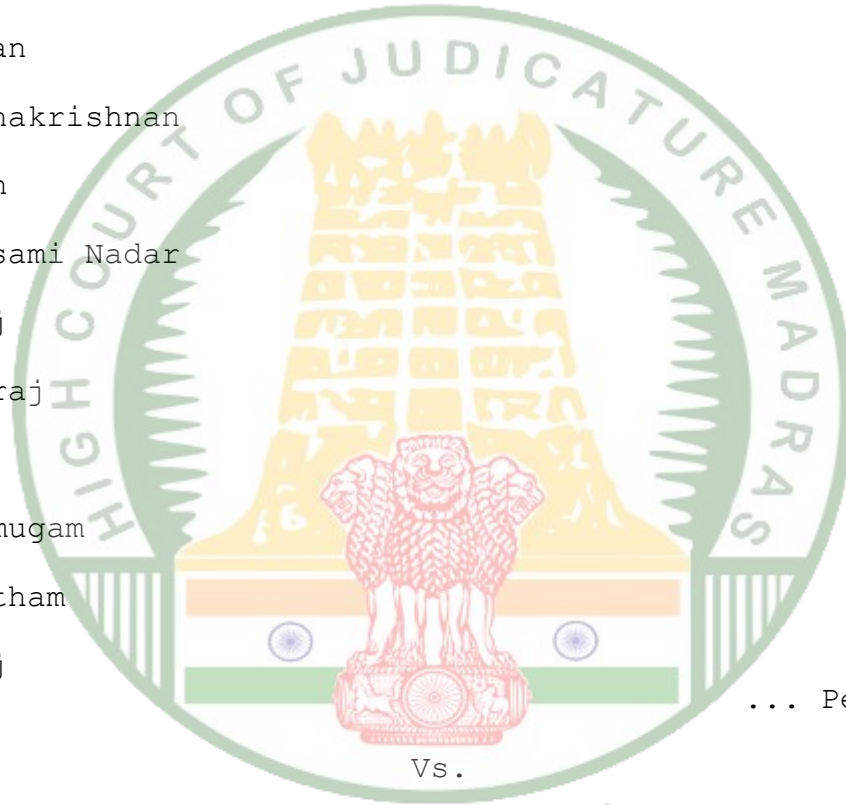
31.C.Devaraj

32.Gopal

33.K.Shanmugam

34.Velayutham

35.Devaraj



... Petitioners

Vs.

State Rep. by
Inspector of Police
C-3, Manimangalam Police Station
Sriperumputhur Taluk
Kanchipuram District
(Crime No.420 of 2005)

सत्यमेव जयते
WEB COPY

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records in C.C.No.229 of 2009 on the file of the learned Judicial Magistrate, Sriperumbudur, is transferred from Judicial Magistrate, Tambaram to quash the same as illegal.

For Petitioners : Mr.R.Sankarasubbu

For Respondent : Mr.C.Iyyapparaj, APP

O R D E R

This petition has been filed to quash the proceedings in C.C.No.229 of 2009, on the file of the learned Judicial Magistrate, Sriperumbudur, is transferred from Judicial Magistrate, Tambaram, in respect of the petitioners herein.

2.The case of the prosecution is that the petitioners were shouting slogans on the edge of the Road Margin as their lands were acquired for private foreign traders. Hence a charge sheet under Section 14, 188, 341 r/w 7(1)(a) of CCA Act in C.C.No.229 of 2009 has been filed before the learned Judicial Magistrate, Tambaram (now transferred to the Judicial Magistrate, Sriperumbudur).

3.It is the contention of the learned counsel appearing for the petitioners that a Police Officer cannot register an FIR in respect of offences under Sections 14, 188, 341 r/w 7(1)(a) of CCA Act and if at all he wants to take action, he can only take preventive action as provided under Section 41 Cr.P.C. and therefore, the case registered by the respondent police against the petitioners is liable to be quashed.

4.The learned counsel appearing for the petitioner further submitted that the very same issue was already decided by this Court in Jeevanandham and others Vs. State, Rep. by Inspector of Police, Velayuthampalayam Police Station, Karur District and another reported in 2018 (2) LW (CrI.) 606, wherein at Paragraph No.25, it has been held as follows:-

"25.In view of the discussions, the following guidelines are issued insofar as an offence under Section 188 of IPC, is concerned:

(a) A Police Officer cannot register an FIR for any of the offences falling under Section 172 to 188 of IPC.

(b) A Police Officer by virtue of the powers conferred under Section 41 of Cr.P.C. will have the authority to take action under Section 41 of Cr.P.C., when a cognizable offence under Section 188 IPC is committed in his presence or where such action is required, to prevent such person from committing an offence under Section 188 of IPC.

(c) The role of the Police Officer will be confined only to the preventive action as stipulated under

Section 41 of Cr.P.C. and immediately thereafter, he has to inform about the same to the public servant concerned/authorised, to enable such public servant to give a complaint in writing before the jurisdictional Magistrate, who shall take cognizance of such complaint on being prima facie satisfied with the requirements of Section 188 of IPC.

(d) In order to attract the provisions of Section 188 of IPC, the written complaint of the public servant concerned should reflect the following ingredients namely;

(i) that there must be an order promulgated by the public servant;

(ii) that such public servant is lawfully empowered to promulgate it;

(iii) that the person with knowledge of such order and being directed by such order to abstain from doing certain act or to take certain order with certain property in his possession and under his management, has disobeyed; and

(iv) that such disobedience causes or tends to cause;

(a) obstruction, annoyance or risk of it to any person lawfully employed; or

(b) danger to human life, health or safety; or

(c) a riot or affray.

(e) The promulgation issued under Section 30(2) of the Police Act, 1861, must satisfy the test of reasonableness and can only be in the nature of a regulatory power and not a blanket power to trifle any democratic dissent of the citizens by the Police.

(f) The promulgation through which, the order is made known must be by something done openly and in public and private information will not be a promulgation. The order must be notified or published by beat of drum or in a Gazette or published in a newspaper with a wide circulation.

(g) No Judicial Magistrate should take cognizance of a Final Report when it reflects an offence under Section 172 to 188 of IPC. An FIR or a Final Report will not become void ab initio insofar as offences other than Section 172 to 188 of IPC and a Final Report can be taken cognizance by the Magistrate insofar as offences not covered under Section 195(1)(a)(i) of Cr.P.C.

(h)The Director General of Police, Chennai and Inspector General of the various Zones are directed to immediately formulate a process by specifically empowering public servants dealing with for an offence under Section 188 of IPC to ensure that there is no delay in filing a written complaint by the public servants concerned under Section 195(1)(a)(i) of Cr.P.C.''

5.Heard the learned Government Advocate (Criminal side) appearing for the State and he did not dispute the abovesaid legal position.

6..In Jeevanandham's case [supra], this Court has held that the assembly of persons were expressing dissatisfaction on the governance and claiming for minimum rights that are guaranteed to an ordinary citizen. If such an assembly of persons are to be trifled by registering an FIR under Section 143 IPC and filing a Final Report for the very same offence, no democratic dissent can ever be shown by the citizens and such prohibition will amount to violation of fundamental rights guaranteed under the Constitution.

7.Considering the facts and circumstance of the case and considering the fact that the issue involved in the present case is squarely covered by the decision of this Court in Jeevanandham's case [supra], this Criminal Original Petition is allowed and the proceedings in Crime No.153 of 2018, on the file of the first respondent is quashed in respect of the petitioner herein. Consequently, connected Miscellaneous Petition is closed.

s/d-

Assistant Registrar(CS VIII)

True Copy

Sub-Assistant Registrar

kas

To

1. Inspector of Police
C-3, Manimangalam Police Station
Sriperumputhur Taluk
Kanchipuram District
(Crime No.420 of 2005)

WEB COPY

2.The Public Prosecutor
High Court of Madras

3.The Section Officer
Criminal Section, High Court of Madras

+1 CC to Mr.R.Sankarasubbu, Advocate sr 104698.

Crl.O.P.No.5446 of 2011

VD(CO)
SP(02/03/2020)



WEB COPY