



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 08.04.2019
CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

WEB COPY

Crl.O.P.(MD)No.4590 of 2019

Asha Bharathi, D/o.Chinnathambi ...Petitioner/Accused No.16
Vs.

1.State Rep. by its
The Inspector of Police,
Sattur Town Police Station,
Sattur, Virudhunagar District....1st Respondent/Complainant
(Crime No.105/2016)

2.Madan Kumar, Village Administrative Officer,
Sattur, Virudhunagar District....2nd Respondent/Defacto
Complainant

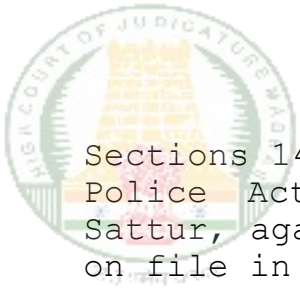
PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the proceedings in S.T.C.No.3113 of 2017, on the file of the Judicial Magistrate Court No.II, Sattur, and quash the same as against the Petitioner, Illegal violation of Law.

For Petitioner: Mr.M.Jothibas
For R1 : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Criminal side)

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in S.T.C.No.3113 of 2017, on the file of the Judicial Magistrate Court No.II, Sattur.

2.The case of the prosecution is that on 17.02.2016, one Anandharaj, S/o.Periyasamy, Vembakottai Taluk, Vettrilai Oorani Village, studying III year B.A. (English) in a College, situate at S.R.Naidu Nagar, affiliated to Madurai Kamaraj University, committed suicide in his house, by self-immolation. After conducting post-mortem, the petitioner/A16 and the other Students, who are studying in Government College at Sattur, demonstrated and raised slogan against the Principal and English Department H.O.D. Since the petitioner/A16 and others demonstrated in front of the Government Hospital, Sattur, and prevented the ingress and egress of the general public, the second respondent, Village Administrative Officer, Sattur Village, Virudhunagar District, lodged a complaint before the first respondent - Law Enforcing Agency. The Law Enforcing Agency registered a case in Crime No.105 of 2016 for the offences under Sections 143, 341 and 188 IPC. After completion of investigation, the first respondent filed a final report under



Sections 143 and 188 IPC and Section 75(1)(c) of the Tamil Nadu City Police Act, 1888, before the Judicial Magistrate Court No.II, Sattur, against the petitioner/A16 and others and the same was taken on file in S.T.C.No.3113 of 2017.

WEB COPY

3.The learned counsel appearing for the petitioner 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 (Crl.) 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

WEB COPY

(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.''

4. Heard the learned Government Advocate (Criminal side) appearing for the State.

<https://hcservices.ecourts.gov.in/hcservices/>

5. In **Jeevanandham's case** [supra], this Court has held that the



assembly of persons were expressing 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.

6.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 S.T.C.No.3113 of 2017, on the file of the Judicial Magistrate Court No.II, Sattur, is quashed in respect of the petitioner herein.

Sd/-

Assistant Registrar (cs-III)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1.The Judicial Magistrate No.II,
Sattur.
- 2.Do Through The Chief Judicial Magistrate,
Virudhunagar District.
- 3.The Inspector of Police,
Sattur Town Police Station,
Sattur,
Virudhunagar District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.M.Jothibas,Advocate, SR.No.59236

CrI.O.P. (MD)No.4590 of 2019
08.04.2019

SP/25.04.2019/ 4P/6C