



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.04.2019

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CrI.O.P.(MD)No.5343 of 2019

and

CrI.M.P.(MD)No.3382 of 2019

Thangam Thennarasu

... Petitioner

Vs.

State through
Sub-Inspector of Police,
Mallanginaru Police Station,
Virudhunagar District.
(Crime No.71/2017)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the proceedings in Crime No.71 of 2017, on the file of the respondent police and quash the same in respect of the petitioner/A1.

For Petitioner : Mr.G.Mariappan

For Respondent : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Criminal side)

O R D E R

This petition has been filed to quash the proceedings in Crime No.71 of 2017, on the file of the respondent police, in respect of the petitioner/A1.

2.The case of the prosecution is that on 13.03.2017 at 11.30 a.m., the petitioner along with 95 persons without obtaining any permission from the Law Enforcing Agency, had formed an unlawful assembly at Fair Price Shop, Mallanginaru, Virudhunagar District, and raised slogans against the Government, condemning the unfair distribution of PDS commodities. Hence, the present case has been registered against the petitioner and 95 others for the offences punishable under Sections 143 and 188 IPC.

3.It is the contention of the learned counsel appearing for the petitioner a Police Officer cannot register an FIR in respect of offences under Sections 172 to 188 of IPC and if at all he wants to take action, he can take only preventive action as provided under Section 41 Cr.P.C. and therefore, the case registered by the respondent police against the petitioner 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 above 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.71 of 2017, on the file of the respondent police, is quashed in respect of the petitioner herein. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AE)

/ True Copy /



To

1. The Sub-Inspector of Police,
Mallanginaru Police Station,
Virudhunagar District.

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.MARIAPPAN, Advocate (SR-61732[F] dated 23/04/2019)

Cr1.O.P. (MD) No.5343 of 2019
22.04.2019

ES/KK/02.05.2019/4P/4C