



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.04.2019

CORAM

WEB COPY

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

CrI.O.P.(MD)Nos.5722, 5723, 5725 and 5728 of 2019
and
CrI.M.P.(MD)No.3607 of 2019 in CrI.O.P.(MD)No.5722 of 2019
and
CrI.M.P.(MD)No.3608 of 2019 in CrI.O.P.(MD)No.5723 of 2019
and
CrI.M.P.(MD)No.3610 of 2019 in CrI.O.P.(MD)No.5725 of 2019
and
CrI.M.P.(MD)No.3613 of 2019 in CrI.O.P.(MD)No.5728 of 2019

CrI.O.P.(MD)No.5722 of 2019:-

A.Thomas Amalanathan ... Petitioner/Accused No.1

Vs.

1.State Rep. by
The Inspector of Police,
Sivagangai Town Police Station,
Sivagangai District.
(Crime No.714/2018) ...1st Respondent/Complainant

2.Ms.Deepa,
Sub-Inspector,
Sivagangai Town Police Station,
Sivagangai District. ...2nd Respondents/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 impugned FIR in Crime No.714 of 2018, dated 28.11.2018, pending on the file of the first respondent and quash the same as illegal as against the petitioner alone.

CrI.O.P.(MD)No.5723 of 2019:-

M.Kalaiselvan ... Petitioner/Accused No.1

Vs.

1.State Rep. by
The Inspector of Police,
Town East Police Station,
Thanjavur District.
(Crime No.117/2018) ...1st Respondent/Complainant

2.Mr.Subramanian,



Inspector of Police,
Town East Police Station,
Thanjavur District.

...2nd Respondents/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 impugned FIR in Crime No.417 of 2018, pending on the file of the first respondent and quash the same as illegal as against the petitioner alone.

Cr1.O.P. (MD) No.5725 of 2019:-

- 1.J.Amali Jancy Rani
- 2.A.Tamilarasi
- 3.T.Shakila
[wrongly mentioned in the FIR as Sasikala]
- 4.D.Nirmala
- 5.N.Deepa
- 6.C.Jayamani
- 7.K.Pramila
- 8.D.Nirmaladevi
- 9.K.Selvi
- 10.G.Boopathi
- 11.K.Kavitha
- 12.R.Renuga
- 13.K.Santhi
- 14.S.Ranganayagi
[wrongly mentioned in the FIR as Renganayagi]
- 15.S.Palaniyammal
- 16.T.Malathi
- 17.D.Jhansimary
[wrongly mentioned in the FIR as Johnsimary]
- 18.P.Praveen Swami
- 19.M.Geetha



20.S.Sumathi

21.M.Uma Maheswari

22.K.Anuja

23.P.Devaki

[wrongly mentioned in the FIR as Devagi]

24.K.C.Meena

25.R.Aruna

26.P.Priya

27.J.Jayaraj

28.A.Francis Daniel Raja

29.P.Srinivasan

30.G.Selvam

31.P.Kalidass

32.M.Kannan

33.M.Raja

34.K.Muruganandham

35.T.K.Ranjithkumar

36.V.Balamurugan

37.T.Senthilkumar

38.M.Vanalingam

39.E.Arokiya Kirubakaran

40.V.Narasimman

[wrongly mentioned in the FIR as Narasmhan]

41.A.Ramaraj

42.M.Rajendran

44.A.Annadurai



45.T.Ponnusamy

46.T.Ravichandhiran

47.P.Arul Kulandai Devadoss

[wrongly mentioned in the FIR as Arulkuzhanthai Devadass]

48.S.Dharmalingam

49.N.Kanthasami

50.K.Ramesh

51.A.John Bosco

52.V.Kamaraj

53.K.Johnson

54.V.Mohan

... Petitioner/Accused No.1 to 54

Vs.

1.State Rep. by

The Sub-Inspector of Police,
Karur Town Police Station,
Karur District.

(Crime No.917/2018)

...1st Respondent/Complainant

2.Mr.M.Kalaiarasan,

Karur Town Police Station,
Karur District.

...2nd Respondents/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 impugned FIR in Crime No.917 of 2018, dated 26.11.2018, pending on the file of the first respondent and quash the same as illegal.

Crl.O.P.(MD)No.5728 of 2019:-

E.Mariya Michel

... Petitioner/Accused No.1 to 54

Vs.

1.State Rep. by

The Inspector of Police,
Nesamony Nagar Police Station,
Kanyakumari District.

(Crime No.208/2018)

...1st Respondent/Complainant

Sub-Inspector,
Nesamony Nagar Police Station,



Kanyakumari District.

... 2nd Respondents/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 impugned FIR in Crime No.208 of 2018, dated 26.11.2018, pending on the file of the first respondent and quash the same as illegal as against the petitioner alone.

For Petitioners : Mr.T.Lajapathi Roy
[in all the Crl.O.Ps.]

For R1 : Mr.A.P.G.Ohm Chairma Prabhu
[in all the Crl.O.Ps.]Government Advocate
(Criminal side)

COMMON ORDER

These Criminal Original Petitions have been filed to quash the proceedings in Crime Nos.714, 417, 917 and 208 of 2018, on the file of the respondent police, in respect of the petitioners herein.

2.The petitioners, who are working as Teachers in different Government Higher Secondary Schools, assembled in a public place and burnt/attempted to burn Government Orders and raised slogans against the Government, against which, the present FIRs. have been registered against them for various offences viz., Sections 143 and 285 IPC, 151 I.P.C., 143, 188 and 285 IPC and 143, 188 and 285 IPC, respectively.

3.It is the contention of the learned counsel appearing for the petitioners 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 petitioners is liable to be quashed.

4.The learned counsel appearing for the petitioners 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 (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

(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.''

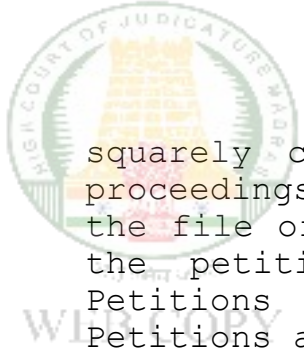
5.It is also the submission of the learned counsel appearing for the petitioners that to attract the offence under Section 285 IPC, an act of a person, rashly or negligently, has to endanger human life or to be likely to cause hurt or injury to any other person. In these cases, the allegation against the petitioners is that they along with some other Teachers burnt/attempted to burn Government Orders in order to express their dissatisfaction of the Government to concede their request and therefore, the ingredients of Section 285 IPC are not attracted in the case of the petitioners.

6.In support of his contention, the learned counsel appearing for the petitioners relied upon a decision of this Court in **A.Santhos Yadav Vs. The Bar Council of Tamil Nadu and others [W.P.No.10560 of 2015, decided on 19.06.2015]**, wherein at Paragraph No.9, it has been held as follows:-

'9.A careful reading of Section 285 would show that the mere burning of an effigy, by itself, was not made a punishable offence under the IPC. In fact, there is not even a reference in Section 285 IPC to the burning of effigies. Section 285 is actually inserted in Chapter XIV of the IPC, which deals with offences affecting public health, safety, convenience, decency and morals. Section 285 itself is grouped along with offences dealing with negligence. The manner in which Section 285 is worded would show that doing anything with fire or any combustible matter any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person, is made punishable. Therefore, acting rashly or negligently so as to endanger human life or in a manner likely to cause hurt or injury, is a sine qua non for making an act come within the meaning of Section 285.''

7.The learned Government Advocate (Criminal side) appearing for the State did not dispute the facts submitted by the learned counsel appearing for the petitioners.

8.Considering the facts and circumstance of the cases and considering the fact that the issue involved in the present cases is



squarely covered by the aforesaid decisions of this Court, the proceedings in Crime Nos.714, 417, 917 and 208 of 2018, pending on the file of the respondent police, are hereby quashed in respect of the petitioners herein. Accordingly, these Criminal Original Petitions are allowed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (cs-II)

// True Copy //

Sub Assistant Registrar(CS-)

To

- 1.The Inspector of Police,
Sivagangai Town Police Station,
Sivagangai District.
- 2.The Inspector of Police,
Town East Police Station,
Thanjavur District.
- 3.The Sub-Inspector of Police,
Karur Town Police Station,
Karur District.
- 4.The Inspector of Police,
Nesamony Nagar Police Station,
Kanyakumari District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+4cc to Mr.T.Lajapathi Roy,Advocate, SR.No.62318,62325,62326,62327

Common order in

Cr1.O.P.(MD)Nos.5722, 5723, 5725 and 5728 of 2019

SP/02.05.2019/ 8P/10C