



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 19.08.2019
Delivered on : 30.08.2019

WEB COPY

CORAM:
THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Crl.O.P. (MD) .Nos.7922, 7923, 8827, 10166, 10315, 10319, 10362, 11229, 8861, 9270, 9357, 9448, 9938, 10076, 11100 and 11109 of 2019

and

Crl.M.P. (MD) Nos.4825, 4826, 4827, 4828, 5578, 5579, 6469, 6472, 6473, 6500, 7049, 7050, 5630, 5907, 5959, 5960, 6019, 6283, 6998, 7006 and 7007 of 2019

PETITIONER(s) :

Sri Raja ... Petitioner(s) in CRL OP(MD). 7922 and 7923/ 2019

1. Sathuragiri
2. Chandren
3. Manimaran
4. Muniyasamy
5. Gnanaguru
6. Chellam
7. Muthu
8. Thirumaxavier
9. Yesu Kani
10. Veerabose
11. Visuwasam
12. Kaliraj
13. Gurusamy
14. Johnraj
15. Bennadic Prabhakaran
16. Thangadurai
17. Munieswaram
18. Sivalingam
19. Thangaraj



20. Muthu
21. Vijay
22. Gnanadurai
23. Paramasivam
24. Murugan
25. Pandian @ Sruthaipandian
26. Thravida Selvam
27. V.S.Gnanakumar
28. Lurthusamy
29. A.Sureshkumar
30. Marisamy
31. Agaramuthalvan
32. Karuppasamy
33. Gnanaselvakumar ... Petitioner(s) in CRL OP(MD). 8827/ 2019

1. Raja
2. Sethupathyaraja
3. Kathick @ Siva Karthick
4. Muthu Krishnan
5. Prasad ... Petitioner(s) in CRL OP(MD).10166/ 2019

- Duraipandi ... Petitioner(s) in CRL OP(MD). 10315/ 2019
- Balaguru ... Petitioner(s) in CRL OP(MD). 10319/ 2019
- P.Duraipandi ... Petitioner(s) in CRL OP(MD). 10362/ 2019

1. A.Pitchai
2. Surya
3. Kumastha Gurusamy @ Gurusamy
4. Veluchamy
5. Mariyappan
6. Soundarraaj
7. Raja



8. Ganesan
9. Vairamuthu
10. Selvakumar
11. Mareeswaran
12. Vanathai
13. Kaliraj
14. Guruvammal
15. Pallatti Gurusamy @ Gurusamy
16. S.Dhamodara
17. T.Manikandan
18. Kathavali @ Rajapandi
19. Keetcha @ Mareeswaran

... Petitioner(s) in CRL OP(MD). 11229/ 2019

1. R.V. Mathan
2. Narayanaperumal
3. Rajakrishnan
4. Harihara Suthan @ Suthan
5. Gowtham
6. Ragavan
7. Arulselvan
8. Surya
9. Lingam
10. Rajadurai
11. Reguram
12. Kannan
13. Sundara Mahalingam
14. Satheesh
15. Sivabalan
16. Siva
17. Gunasekar @ Sekar
18. Suyambulingam



20. Sureshkumar @ Suresh

21. Jothi Ananthan

22. Aravinth

23. Kumar

24. Natesan

25. Sreedharan

26. Panneerselvam

... Petitioner(s) in CRL OP(MD). 8861/ 2019

1. Balamurugan

2. Senthilkumar

3. Pitchai Maideen

4. Ashok

5. Manickavasagam

6. Karunanidhi

7. Subramani @ Vellaiyan

8. Naganthan

9. Prabu

10. Mutharasu

11. Mahasundar

12. Shanmuganathan

13. Arumugam

14. Manoharan

15. Selvam

16. Ayyakannu

17. Gandhinathan

18. Annadurai

19. Prakash

20. Abdul Zabbar

21. Selvam

22. Nainar Mohamed

23. Periyakaruppan



25. Subbiah

26. Sevathal

27. Chitraraman

28. Zahir Hussian

... Petitioner(s) in CRL OP(MD). 9270/ 2019

WEB COPY

Vaigai Sekar

... Petitioner(s) in CRL OP(MD). 9357/ 2019

Thangaraj

... Petitioner(s) in CRL OP(MD). 9448/ 2019

1. Muthuvel

2. Muthukrishnan

3. Nagaraj

4. Selvaganesh

5. Manickam

6. Nagarajan

7. Sathish

8. Prabakaran

9. Sankar

10. Suresh

11. Kailasam

12. Anand

13. Arun

14. Chandrakanth

15. Selvakumar

16. Perumathi

17. Mahesh

18. Jayaraj Pitchaimani

19. Jothidrakumar

... Petitioner(s) in CRL OP(MD). 9938/ 2019

1. Paramasivam

2. Alagarsamy

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



3. Subbiah ... Petitioner(s) in CRL OP(MD). 10076/ 2019

1. Balasubramaniam

2. Sekar @ Rajasekar

3. Raja

4. Iyyappan Palavesam

5. Selvam @ Madasamy

6. Thenkala Maharaja

7. Ganesan ... Petitioner(s) in CRL OP(MD). 11100/ 2019

1. Gandhi

2. Palraj

3. Jeyachandran

4. Ayyadurai

5. Kathiravan

6. Meenakshi Sundaram ... Petitioner(s) in CRL OP(MD). 11109/ 2019

VS

RESPONDENT (s) :

1. The Inspector of Police

Sivakasi Town Police Station, Virudhunagar District

Cr.No.362 of 2016

2. Sakthi Manikandan,

Sub Inspector of Police, Sivakasi Town Police Station,

Virudhunagar District

... Respondent(s) in CRL OP(MD). 7922/ 2019

1. The Inspector of Police

Sivakasi Town Police Station, Virudhunagar District

Cr.No.295 of 2016

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



2. Rathinam,
Sub Registrar Of Co-Operative Societies,
Sivakasi, Virudhunagar District

... Respondent(s) in CRL OP(MD). 7923/ 2019

WEB COPY

The Inspector of Police
Sattur Town Police Station, Virudhunagar District
(Cr.No.539/2016)

... Respondent(s) in CRL OP(MD). 8827/ 2019

1.The Inspector of Police
Sivagangai Town Police Station, Sivagangai District
(Cr.No.239/2017)

2. Mr.Boopathiraj,
The Sub Inspector of Police,
Sivagangai Town Police Station, Sivagangai District

... Respondent(s) in CRL OP(MD). 10166/ 2019

1. The Inspector of Police
Karaikudi North Police Station, Sivagangai District.

2. Selvi
Sub Inspector of Police Karaikudi North Police Station,
Sivagangai District.

... Respondent(s) in CRL OP(MD). 10315/ 2019

1. The Inspector of Police
C4- Thilagarthidal Police Station, (L and O),
Madurai City, Madurai District

2. R.Sangeetha
The Sub Inspector of Police,
C4-Thilagarthidal Police Station, Madurai City,



Madurai District

Cr.No.362 of 2016

... Respondent(s) in CRL OP(MD). 10319/ 2019

1. The Inspector of Police

Karaikudi North Police Station,

Sivagangai District.

2. Mr.R.Aathmanathan,

Inspector of Police, Karaikudi North Police Station,

Sivagangai District

.... Respondent(s) in CRL OP(MD). 10362/ 2019

1. The Inspsector of Police

Sattur Town Police Station, Virudhunagar District

(Crime No.147 of 2107)

... Respondent(s) in CRL OP(MD). 11229/ 2019

1. The Inspector of Police,

Rajakkamangalam Police Station, Kanyakumari District,

Crime No.72/2019

2. Usha Devi

Village Administrative Officer,

Neendakkarai B Village, Agatheeswaram Taluk, Kanyakumari District

... Respondent(s) in CRL OP(MD). 8861/ 2019

The Inspector of Police

Devakottai Town Police Station, Sivagangai District

Cr.No.224 of 2017

... Respondent(s) in CRL OP(MD). 9270/ 2019

1. The Sub Inspector of Police

Andipatti Police Station, Theni District (Cr.No.126/2011)



2. Mr.G.S.Raveendran,
Sub Inspector of Police, Andipatti Police Station, Theni District
... Respondent(s) in CRL OP(MD). 9357/ 2019

1. The Inspector of Police
Sivakasi Town Police Station, Virudhunagar District,
Crime No.330/2016

2. Mr. Pandi
Village Administrative Officer, Sikakasi Town,
Virudhunagar District

... Respondent(s) in CRL OP(MD). 9448/ 2019

1. The Inspectdor of Police
Vikkiramasingapuram Police Station, Tirunelveli District,
Crime No.123/2018

2. Nagaraj
S/o. Nagalingam, No.54a/16, Mariamman Kovil Street,
North Car Street, Vikkiramasingapuram, Tirunelveli District

... Respondent(s) in CRL OP(MD). 9938/ 2019

The Inspector of Police
Vilakkuthoon P.S., Madurai City.

... Respondent(s) in CRL OP(MD). 10076/ 2019

The Inspector of Police
Mela Palayam Police Station, Tirunelveli

... Respondent(s) in CRL OP(MD). 11100/ 2019

1. The Sub Inspector of Police
Andipatti Police Station, Theni District
Crime No. 126 of 2011

2. Mr. G.S. Reveendran
Sub Inspector of Police Andipatti Police Station,



Theni District

.... Respondent(s) in CRL OP(MD) . 11109/ 2019

Prayer in CRL OP(MD) . 7922/ 2019 :

Criminal Original Petition filed under Section 482 of Criminal Proedure Code, praying this Court to call for the records in the case in STC.No.395 of 2019 on the file of the Judicial Magistrate Court No.1, Sivakasi and quash the same as against the petitioner/accused no.1 as illegal abuse process of law.

Prayer in CRL OP(MD) . 7923/ 2019 :

Criminal Original Petition filed under Section 482 of Criminal Proedure Code, praying this Court to call for the records in the case in STC.No.397 of 2019 on the file of the Judicial Magistrate Court No.1, Sivakasi and quash the same as against the petitioner/accused no.1 as illegal abuse process of law.

Prayer in CRL OP(MD) . 8827/ 2019 :

Criminal Original Petition filed under Section 482 of Criminal Proedure Code, praying this Court to call for the records in STC.No.1172 of 2017 on the file of the Judicial Magistrate No.II, Sattur, Virudhunagar District and to quash the same.

Prayer in CRL OP(MD) . 10166/ 2019 :

Criminal Original Petition filed under Section 482 of Criminal Proedure Code, praying this Court to call for the entire records pertaining to the case in STC.No.750 of 2018 pending on the file of the JM No.I, Sivagangai, Sivagangai District and quash the same as against the petitioners.

Prayer in CRL OP(MD) . 10315/ 2019 :

Criminal Original Petition filed under Section 482 of Criminal Proedure Code, praying this Court to call for the entire records connected with the case in S.T.C. No. 2433 of 2014 pending on the file of the Principal District Munsif Cum Judicial Magistrate Court, Karaikudi and quash the same as illegal insofar as it relates to the Petitioners.

Prayer in CRL OP(MD) . 10319/ 2019 :

Criminal Original Petition filed under Section 482 of Criminal Proedure Code, praying this Court to call for the records pertaining



to the case in S.T.C.No.187 of 2016 on the file of the Judicial Magistrate No.II, Madurai and quash the same

Prayer in CRL OP(MD) . 10362/ 2019 :

Criminal Original Petition filed under Section 482 of Criminal Proedure Code, praying this Court to call for the entire records connected with the case in C.C.No.165 of 2013 pending on the file of the Prl Dist Cum JM Court, Karaikudi and quash the same.

Prayer in CRL OP(MD) . 11229/ 2019 :

Criminal Original Petition filed under Section 482 of Criminal Proedure Code, praying this Court to call for the records pursuant to the proceedings in STC No.1602 of 2018 on the file of the Judicial Magistrate No.II, Sattur and quash the same.

Prayer in CRL OP(MD) . 8861/ 2019 :

Criminal Original Petition filed under Section 482 of Criminal Proedure Code, praying this Court to call for the records in Cr.No.72/2019 on the file of the 1st respondent, quash the same.

Prayer in CRL OP(MD) . 9270/ 2019 :

Criminal Original Petition filed under Section 482 of Criminal Proedure Code, praying this Court to call for the records in connection with the impugned FIR in Cr.No.224 of 2017 on the file of the respondent police and quash the same in respect of the petitioners.

Prayer in CRL OP(MD) . 9357/ 2019 :

Criminal Original Petition filed under Section 482 of Criminal Proedure Code, praying this Court to call for the entire records pertaining to the case in C.C.No.141 of 2011 on the file of the learned Judicial Magistrate, Andipatti, Theni District and quash the same.

Prayer in CRL OP(MD) . 9448/ 2019 :

Criminal Original Petition filed under Section 482 of Criminal Proedure Code, praying this Court to call for the records pertaining to the case in STC.No.400/2019 pending on the file of the Judicial Magistrate No.I, Sivakasi and quash the same.

Prayer in CRL OP(MD) . 9938/ 2019 :

Criminal Original Petition filed under Section 482 of Criminal Proedure Code, praying this Court to call for the records relating to Crime No.232/2013 pending on the file of the respondent police



and quash the same.

Prayer in CRL OP(MD) . 10076/ 2019 :

Criminal Original Petition filed under Section 482 of Criminal Proedure Code, praying this Court to call for the records in STC No.1600 of 2019 on the file of the Judicial Magistrate No.I, Madurai and quash the same as against these petitioners.

Prayer in CRL OP(MD) . 11100/ 2019 :

Criminal Original Petition filed under Section 482 of Criminal Proedure Code, praying this Court to call of the records pertaining to C.C.No.51 of 2016 on the file of the Judicial Magistrate No.IV, Tirunelveli and quash the same

Prayer in CRL OP(MD) . 11109/ 2019 :

Criminal Original Petition filed under Section 482 of Criminal Proedure Code, praying this Court to Call for the entire records pertaining to the case in C.C. No. 141 of 2011 on the file of the Judicial Magistrate , Andipatti, Theni District and quash the same and pass such any or other orders.

FOR PETITIONERS:

MR.M.JOTHIBASU ADVOCATE FOR THE PETITIONER

IN CRL OP(MD)No.7922 and 7923 of 2019

MR. S.C. HEROLD SINGH ADVOCATE FOR THE PETITIONER

IN CRL OP(MD)No.8827 of 2019

MR.B. SANTHANAM RAJAKUMAR ADVOCATE FOR THE PETITIONER

IN CRL OP(MD)No.10166 of 2019

MR.S.MALAIKANI ADVOCATE FOR THE PETITIONER

IN CRL OP(MD)No.10315 and 10362 of 2019

MR.S.RAMASAMY ADVOCATE FOR THE PETITIONER

IN CRL OP(MD)No.10319 of 2019

MRS.LAKSHMIGOPINATHAN

FOR POLEX LEGAL SOLUTIONS ADVOCATE FOR THE PETITIONER

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



IN CRL OP(MD)No.11229 of 2019

MR. C.T.PERUMAL ADVOCATE FOR THE PETITIONER

IN CRL OP(MD)No.8861 of 2019

MR.S.M.SANJAY ADVOCATE FOR THE PETITIONER

IN CRL OP(MD)No.9270 of 2019

MR.S.BALAJI ADVOCATE FOR THE PETITIONER

IN CRL OP(MD)No..9357 and 11109 of 2019

MR.N.DILIPKUMAR ADVOCATE FOR THE PETITIONER

IN CRL OP(MD)No.9448 of 2019

MR.S.RAVI ADVOCATE FOR THE PETITIONER

IN CRL OP(MD)No.9938 of 2019

MR.K.NEELAMEGAM ADVOCATE FOR THE PETITIONER

IN CRL OP(MD)No.10076 of 2019

MR.P.SUBBIAH ADVOCATE FOR THE PETITIONER

IN CRL OP(MD)No.11100 of 2019

FOR RESPONDENTS:

MR.K.K.RAMAKRISHNAN, ADDITIONAL PUBLIC PROSECUTOR

ON BEHALF OF THE RESPONDENT NO.1

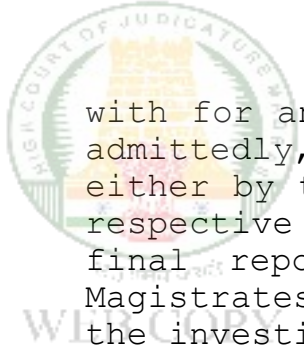
IN ALL CRL OP'S.

COMMON ORDER

This batch of Criminal Original Petitions have been filed challenging the criminal proceedings initiated against the petitioners. The major offence involved in all these cases is under Section 188 of the Indian Penal Code, along with other offences either under the Indian Penal Code or under other Special Acts.

2. Since the issues involved in all these Criminal Original Petitions are one and the same, all the Criminal Original Petitions were heard together and disposed by this common order.

3. The learned counsel appearing for the petitioners in all these petitions would contend that, the issue involved in all the Criminal Original Petitions is already covered by a judgment of this Court in **Jeevanandham and others Vs. State rep. by Inspector of Police** reported in **2018(2) L.W. (Crl.) 606**. According to the petitioners, in all the cases, the petitioners have been charged



with for an offence under Section 188 of the Indian Penal Code, and admittedly, in all cases, the respective complaints have been filed either by the Inspector of Police or Sub-Inspector of Police in the respective Police Stations. In some cases, after investigation, final reports have also been filed, and the learned Judicial Magistrates have also taken cognizance of offence, in some cases, the investigation is still pending.

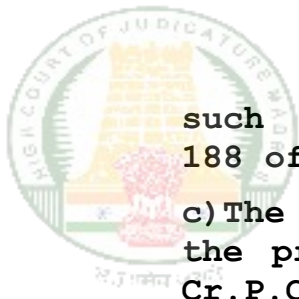
4. According to the petitioners, as the offence under Section 188 of the Indian Penal Code falls within the ambit of Section 195 of the Code of Criminal Procedure [hereinafter referred to as 'the Code'], Court cannot take cognizance, based on the First Information Report registered by the police and a final report filed thereafter under Section 173(2) of the Code. According to them, under Section 195(1)(a) of the Code, the Magistrate can take cognizance only on a written complaint by a public servant concerned or some other public servant to whom he is administratively subordinate. In all the instant cases, no complaint has been filed by the public servant concerned, but, the First Information Reports have been registered by the Station House Officers, and in number of cases, the complainant himself has investigated the case and filed the final report under Section 173(2) of the Code, which is totally illegal. That apart, in respect of other offences for which the petitioners are charged, they are only consequential to the offence under Section 188 of the Indian Penal Code. Once the very taking cognizance of the offence under Section 188 of the Indian Penal Code is found to be illegal, consequently, other allied offences should also necessarily be quashed. The learned counsel appearing for the petitioners in some cases, would contend that the very filing of the final report itself is barred by limitation and the learned Judicial Magistrate ought not to have taken cognizance of the offence, as taking cognizance is totally barred under Section 468 of the Code.

5. The learned counsel appearing for the petitioners, in support of their contentions, would strongly rely upon the judgment in **Jeevanandham's** case cited *supra*, wherein this Court has 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."

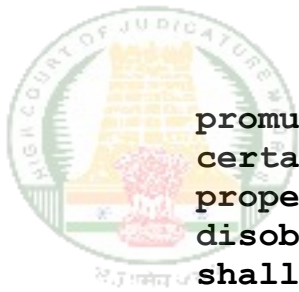
6. Per contra, Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the respondent police, would vehemently contend that, the judgment reported in **Jeevanandham's** case did not consider various legal issues, and the judgment is clearly distinguishable, and submitted that in all the cases, a valid order has been promulgated by a public servant, who is lawfully empowered to promulgate such order, the petitioners, fully aware of the promulgation of that order, have willfully disobeyed the same. The petitioners are not only charged with for an offence under Section 188 of the Indian Penal Code, but, they have also been charged with for other allied offences, like 143, 341 of the Indian Penal Code and also Section 7(1) (a) of the Criminal Law Amendment Act, etc.

7. The learned Additional Public Prosecutor would further contend that, under Section 155(4) of the Code, where a case relates to two or more offences of which at least one of the offences is cognizable, the case shall be deemed to be a cognizable case, irrespective of the fact that the other offences are non-cognizable. Hence, the police officers are empowered to register the complaint and file a report under Section 173(2) of the Code, and there is no bar for taking cognizance by the learned Judicial Magistrate. That apart, the learned Additional Public Prosecutor also submitted that the police officer is also a public servant under Section 21 of the Indian Penal Code and he is also empowered to file a complaint under Section 188 of the Indian Penal Code. In support of the contention, the learned Additional Public Prosecutor appearing for the respondent police relied upon various judgments, which will be referred to, at later part of this judgment.

8. Before considering the rival submissions, it is useful to refer to the relevant provisions of law:

Section 188 of the Indian Penal Code reads as follows:

"188.Disobedience to order duly promulgated by public servant. - Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to



promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

9. To bring home an offence under Section 188 of the Indian Penal Code, the prosecution has to prove that there was an order promulgated by a public servant, and that public servant is lawfully empowered to promulgate such order, the persons should have a knowledge about the order promulgated by public servant, and willfully disobeyed that order, such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray.

10. The offence under Section 188 of the Indian Penal Code, falls under the ambit of Section 195 of the Code. For better understanding, the relevant provision of Section 195 of the Code of Criminal Procedure is extracted hereunder:

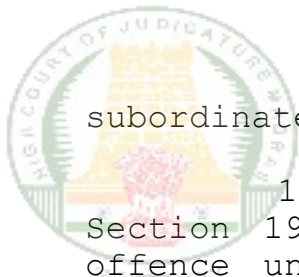
"195(1) No Court shall take cognizance -

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, 1860 (45 of 1860); or

(ii) of any abetment of, or attempt to commit, such offence; or

(iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate."

11. A cursory look of the above provision would go to show that, Section 195 of the Code bars taking cognizance of any offence punishable under Sections 172 to 188 of the Indian Penal Code except on a complaint in writing given by the public servant concerned or some other public servant to whom he is administratively



subordinate.

12. It is the contention of the petitioners that when Section 195 of the Code bars the Court taking cognizance of an offence under Section 188 of the Indian Penal Code except on a written complaint filed by a public servant concerned, in the instant cases, no such complaints have been filed by a public servant before the concerned Judicial Magistrate. But, the learned Judicial Magistrate has taken cognizance of the offence, based on a police report filed under Section 173(2) of the Code. This Court in **Jeevanandham's** case (cited *supra*), after surveying various judgments of the Hon'ble Supreme Court and this Court, has held that the police officer cannot register a First Information Report for an offence under Section 188 of the Indian Penal Code and the learned Judicial Magistrate cannot take cognizance of the offence, based on the final report filed under Section 173(2) of the Code. However, this Court has held that, there is no bar for the learned Judicial Magistrate for taking cognizance of the offence other than the offence under Section 188 of the Indian Penal Code.

13. Mr.K.K.Ramakrishnan, learned Additional Public Prosecutor appearing for the respondent police, relying upon the judgments of the Hon'ble Supreme Court in **State of Orissa v. Sharat Chandra Sahu [AIR 1997 SC 1]**; **Central Bureau of Investigation v. M.Sivamani [2018(1) LW (Crl.) 308]** and another judgment of the Hon'ble Supreme Court in **Pravin Chandra Mody v. State of Andhra Pradesh** reported in **AIR 1965 SC 1185**, tried to impress upon this Court, contending that where a case comprising of several offences, in which some of the offences are cognizable and some of the offences are non-cognizable, while conducting investigation for the cognizable offence, the police officer is also empowered to conduct investigation in respect of non-cognizable offence also, and no separate complaint is required to be filed by the public servant before the concerned Magistrate.

14. Coming to the judgment relied on by the learned Additional Public Prosecutor in **State of Orissa v. Sharat Chandra Sahu [AIR 1997 SC 1]**, the criminal case disclosed both cognizable and non-cognizable offences, wherein the Hon'ble Supreme Court, considering Section 155(4) of the Code of Criminal Procedure, has held that the police officers are empowered to conduct investigation for the non-cognizable offences also treating the non-cognizable offence as a cognizable offence. The relevant portion of the judgment reads as follows:

"11. Sub-section (4) creates a legal fiction and provides that although a case may comprise of several offences of which some are cognizable and others are not, it would not be open to the police to investigate the cognizable offences only and omit the non-cognizable offences. Since the whole case (comprising of cognizable

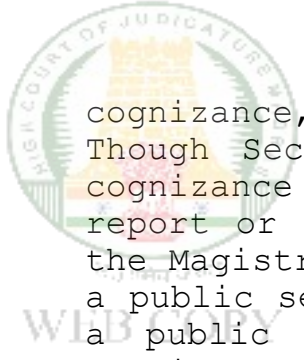


and non-cognizable offences) is to be treated a cognizable, the police had no option but to investigate the whole of the case and to submit a charge-sheet in respect of all the offences, cognizable or non-cognizable both, provided it is found by the police during investigation that the offences appear, *prima facie*, to have been committed."

15. In the next judgment referred to by the learned Additional Public Prosecutor appearing for the respondent police, in **Central Bureau of Investigation v. M.Sivamani [2018(1) LW (CrI.) 308]**, the High Court ordered investigation by CBCID regarding some fraud committed in awarding compensation in motor accident claim cases. Later on, the High Court transferred the investigation to CBI, based on the direction, a crime was registered including for an offence under Section 182 of the Indian Penal Code, wherein, the plea was raised that, for an offence under Section 182 of the Indian Penal, a complaint must be filed by a public servant concerned, in absence of any such complaint, the Court cannot take cognizance. In that case, the Hon'ble Supreme Court has held that, while the bar against the taking cognizance of a specific offence is mandatory, it should be understood in the context of the purpose for which such a bar is created, which is not intended to take away the remedy against a crime but only to protect an innocent person against false or frivolous proceedings by a private person. In the above context, the Hon'ble Supreme Court has held that, the expression "**public servant or his administrative superior**" cannot exclude the High Court, this case is no way helpful to the respondent.

16. So far as the judgment in **Pravin Chandra Mody v. State of Andhra Pradesh** reported in **AIR 1965 SC 1185** is concerned, the offences are under Section 7 of the Essential Commodities Act and Section 420 of the Indian Penal Code, wherein Section 11 of the Essential Commodities Act bars the Court taking cognizance except on a report in writing of a fact constituting such offence made by a person who is a public servant, as defined under Section 21 of the Indian Penal Code. Wherein the Hon'ble Supreme Court has held that the police officer was investigating an offence under Section 420 of the Indian Penal Code, which was based on the same facts, as the offence under Section 7 of the Essential Commodities Act, and the police officer, who is also a public servant under Section 21 of the Indian Penal Code, is empowered to file a final report. Some other judgments relied upon by the learned Additional Public Prosecutor also are on the very same line. All those judgments relied upon by the learned Additional Public Prosecutor appearing for the respondent are not factually applicable to the instant cases.

17. For an offence under Section 188 of the Indian Penal Code, Section 195(1)(a) of the Code prohibits the Court from taking

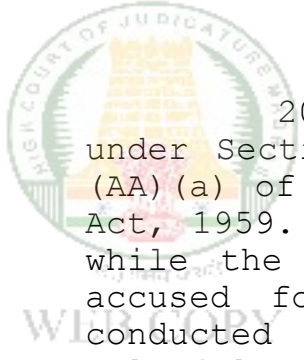


cognizance, unless complaint has been made by a public servant. Though Section 190 of the Code, empowers the Magistrate to take cognizance of any offence upon receiving a complaint or police report or information, or upon his own knowledge, Section 195 bars the Magistrate from taking cognizance except on a complaint given by a public servant concerned. In the absence of any such complaint by a public servant, the learned Judicial Magistrate cannot take cognizance of any offence which falls under Section 188 of the Indian Penal Code. This Court in **Jeevanandham's** case cited *supra*, after surveying number of judgments of the Hon'ble Supreme Court and this Court, has held that, there must be a complaint by a public servant, who is lawfully empowered, under Section 195 of the Code, and it is mandatory, the non-compliance will make the entire process void *ab initio*, and I find no reason to differ with the findings in **Jeevanandham's** case. In the above circumstances, in all the cases, charge under Section 188 of the Indian Penal Code should necessarily be quashed.

18. The next contention of the learned counsel appearing for the petitioners is that, to charge the petitioners under Section 188 of the Indian Penal Code, the prosecution should establish that a valid order has been promulgated by a public servant, who is lawfully empowered to promulgate such order, that order should also be made known to all the persons concerned. But, either in the First Information Report or in the final report filed under Section 173(2) of the Code, absolutely, there is no whisper about the promulgation of any such order by the public servant, and, there is no averment to the effect that such order has been widely published, it was made known to the petitioners concerned, and the petitioners have willfully disobeyed that order. In the absence of compliance of the above necessary ingredients, the petitioners cannot be charged for the offence under Section 188 of the Indian Penal Code.

19. Per contra, the learned Additional Public Prosecutor appearing for the respondent police would contend that in all those cases, an order has been promulgated by the public servant lawfully empowered in this regard, and it is also widely published in the locality concerned. The petitioners were also fully aware of the fact. Those contentions cannot be decided generally, and it should be decided based on the facts of the individual cases. That apart, so far as the issue relating to the limitation is concerned, the question of limitation also can be considered in the individual cases. In the above circumstances, I proceed to consider the individual cases on those issues and also in respect of other allied offences for which the petitioners have been charged.

Cr1.O.P. (MD) No.7922 of 2019:



20. The petitioner/A-1, stood charged for the offences under Sections 143 and 188 of the Indian Penal Code r/w Section 4 (AA) (a) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959. Totally, there are three accused. The allegation is that while the Election Code of Conduct, was in force, all the three accused formed unlawful assembly, holding the party flags and conducted an election campaign. Section 143 is a punishment for unlawful assembly. Unlawful assembly has been defined under Section 141 of the Indian Penal Code, that, an assembly of five or more persons alone can be considered as "unlawful assembly", whereas, in the instant case, it is only three persons said to have formed the assembly, and, it cannot be considered as an unlawful assembly. Hence, the petitioner cannot be charged with for an offence under Section 143 of the Indian Penal Code. That apart, to charge the petitioner for the offence under Section 4(AA)(a) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959, absolutely, there is no material available on record to show that the petitioner has violated the above provision of the Act. As already held, that charge under Section 188 of the Indian Penal Code is liable to be quashed. Hence, the entire criminal proceedings initiated against the petitioner in S.T.C.No.395 of 2019 on the file of the Judicial Magistrate Court No.I, Sivakasi, is liable to be quashed and accordingly, it is quashed.

Crl.O.P. (MD) .No.7923 of 2019:

21. The petitioner/sole accused, stood charged for the offences under Sections 143 and 188 of the Indian Penal Code r/w Section 4(AA)(a) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959. The allegation is that while the Election Code of Conduct was in force, the petitioner, who belongs to a political party, conducted the rally violating the permission granted. Section 143 is a punishment for unlawful assembly. Unlawful assembly has been defined under Section 141 of the Indian Penal Code, an assembly of five or more persons can alone be considered as "unlawful assembly", whereas, in the instant case, charge sheet has been filed implicating the petitioner alone as an accused, and hence, the petitioner cannot be charged with for an offence under Section 143 of the Indian Penal Code. That apart, to charge the petitioner for the offence under Section 4(AA)(a) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959, absolutely, there is no material available on record to show that the petitioner has violated the provisions of the aforesaid Act. As already held, that charge under Section 188 of the Indian Penal Code is liable to be quashed. Hence, the entire criminal proceedings initiated against the petitioner in S.T.C.No.397 of 2019 on the file of the Judicial Magistrate Court No.I, Sivakasi, is liable to be quashed and accordingly, it is quashed.

Crl.O.P. (MD) .No.8827 of 2019:

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



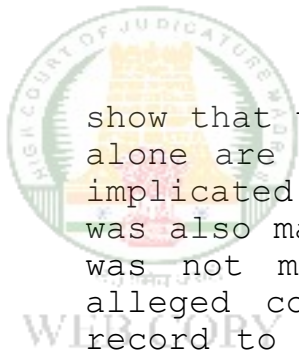
22. The petitioners/Accused Nos.1 to 33, stood charged for the offences under Sections 143 and 188 of the Indian Penal Code. The allegation against the petitioners is that on 16.09.2016, the petitioners made an unlawful assembly and indulged in Dharna in front of a train at Sattur Railway Station. When an order under Section 30(2) of the Police Act was in force, in violation of the same, they made an agitation. This Court in **Jeevanandham's** case held that violation of Section 30(2) of the Police Act will not constitute an offence under Section 143 of the Indian Penal Code, as an order passed under Section 30(2) is only regulatory in nature, by which, the police cannot prohibit any agitations. In the above circumstances, the charge under Section 143 of the Indian Penal Code is also liable to be quashed and accordingly, quashed. In the above circumstances, the entire criminal proceedings initiated against the petitioners in S.T.C.No.1172 of 2017 on the file of the learned Judicial Magistrate No.II, Sattur, Virudhunagar District, is liable to be quashed and accordingly, it is quashed.

Crl.O.P. (MD) .No.10166 of 2019:

23. The petitioners/Accused Nos.1 to 5 stood charged for the offences under Sections 143 and 188 of the Indian Penal Code. The allegation against the petitioners is that on 20.03.2017, when an order under Section 30(2) of the Police Act was in force, in violation of the same, the petitioners formed an unlawful assembly and conducted agitations. As already stated, this Court in **Jeevanandham's** case held that violation of Section 30(2) of the Police Act will not constitute an offence under Section 143 of the Indian Penal Code, as an order passed under Section 30(2) is only regulatory in nature, by which, the police cannot prohibit any agitations. In the above circumstances, the charge under Section 143 of the Indian Penal Code is also liable to be quashed and accordingly, quashed. Thus, the entire criminal proceedings initiated against the petitioners in S.T.C.No.750 of 2017 on the file of the learned Judicial Magistrate No.I, Sivagangai, Sivagangai District, is liable to be quashed and accordingly, it is quashed.

Crl.O.P. (MD) .No.10315 of 2019:

24. The petitioner/Accused No.1, stood charged for the offences under Section 188 of the Indian Penal Code and Section 4(1)(A) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959. The allegation against the petitioner is that some wall posters have been affixed in Karaikudi Municipal Office compound wall by Sivagangai District Vanniyar Sangam, Sivagangai District Pattali Makkal Katchi and National Forward Block party. But, from the materials available on record, there is nothing to



show that the petitioner has affixed the posters and his party names alone are found place in the posters. Now, the petitioner has been implicated based on the confession statement of one Saravanan, who was also made as an accused later on. But, that confession statement was not made available along with the final report. Except the alleged confession statement, there is no material available on record to show that the petitioner directed Saravanan to affix the posters. In the above circumstances, no *prima facie* case is made out against the petitioner. Hence, the entire criminal proceedings initiated against the petitioner in S.T.C.No.2433 of 2014 pending on the file of the learned Principal District Munsif -cum- Judicial Magistrate, Karaikudi, is liable to be quashed and accordingly, it is quashed.

Crl.O.P. (MD) .No.10319 of 2019

25. The petitioner/sole Accused stood charged for the offences under Section 188 of the Indian Penal Code and Section 4-A (1)(b) r/w Section 4-B of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959. The allegation against the petitioner is that when the Election Code of Conduct was in force, the petitioner has hoisted a party flag in the public place without obtaining any permission. Hence, he committed the aforesaid offences.

26. At this juncture, it is useful to refer to Section 4-A(1)(b) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959, which reads as follows:

"4-A. Prohibition of pasting of posters and fixing of thatty boards etc.

(1) Notwithstanding anything contained in Section 3, 3A, or 4 or any other provision of this Act, or in any law for the time being in force, no person shall, in any local area, -

(a)

(b) Put up for fix and thatty board or board supported on, or attached to, any post, pole standard, framework or other support wholly or in part upon or over any land, building, wall of structure."

The aforesaid provision only deals with prohibition of pasting of posters and fixing of thatty boards, etc. But, in this case, the allegation is that the petitioner has only hoisted a flag, and at any rate, it does not amount to violation of Section 4-A(1)(b) r/w Section 4-B of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959. Hence, no *prima facie* case is made out against the petitioner. In the above circumstances, the entire criminal proceedings initiated against the petitioner in S.T.C.No.187 of 2016 pending on the file of the learned Judicial Magistrate No.II, Madurai, is liable to be quashed and accordingly, it is quashed.



Crl.O.P. (MD) .No.10362 of 2019 :

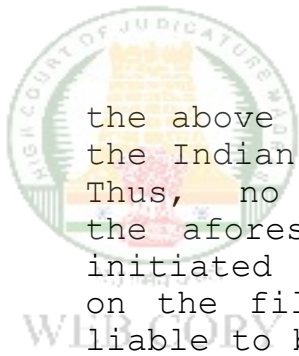
27. The petitioner/Accused No.1 stood charged for the offences under Sections 341 and 188 of the Indian Penal Code r/w Section 7(1)(a) of the Criminal Law Amendment Act. The allegation against the petitioner is that when an order under Section 30(2) of the Police Act was in force, the petitioner and other accused persons made a protest against the arrest of Dr.Ramadass, the leader of Pattali Makkal Katchi, hence, the petitioner committed the offences. As already held, the order issued under Section 30(2) of the Police Act is only regulatory in nature, and, that cannot prohibit the persons from forming a lawful assembly.

28. To bring home an offence under Section 341 of the Indian Penal Code, the prosecution should establish that the person wrongfully restrains any person so as to prevent the person from proceeding in any direction in which the person has a right to proceed. But the material available on record shows that the petitioner has only conducted a peaceful agitation and there is no material to show that he has wrongfully obstructed any person. In the above circumstances, the offence under Section 341 of the Indian Penal Code and Section 7(1)(a) of the Criminal Law Amendment Act will not attract in the petitioner's case. Thus, the entire criminal proceedings initiated against the petitioner in C.C.No.165 of 2013 pending on the file of the learned Principal District Munsif -cum- Judicial Magistrate, Karaikudi, is liable to be quashed and accordingly, it is quashed.

Crl.O.P. (MD) .No.11229 of 2019:

29. The petitioners/Accused Nos.1 to 17, 19 and 20 stood charged for the offences under Sections 341, 143 and 188 of the Indian Penal Code. The allegation against the petitioners is that they have conducted agitation against the illegal drawing of water by one J.K.Mineral Water Company in Sattur to Vettrilai Oorani Main Road. But, absolutely, there is no material available on record to show that a valid order has been promulgated by a public servant prohibiting any agitation and the petitioners have willfully disobeyed the order issued by the public servant. In the absence of any materials, the petitioners cannot be charged with under Section 188 of the Indian Penal Code.

30. To bring home an offence under Section 341 of the Indian Penal Code, the prosecution should establish that the person wrongfully restrains any person so as to prevent the person from proceeding in any direction in which the person has a right to proceed. But the material available on record shows that the petitioners have only conducted a peaceful agitation and there is no material to show that they have wrongfully obstructed any person. In



the above circumstances, the offences under Sections 341 and 143 of the Indian Penal Code will not attract the case of the petitioners. Thus, no *prima facie* case is made out against the petitioners for the aforesaid offences. Hence, the entire criminal proceedings initiated against the petitioners in S.T.C.No.1602 of 2018 pending on the file of the learned Judicial Magistrate No.II, Sattur, is liable to be quashed and accordingly, it is quashed.

Crl.O.P. (MD) .No.8861 of 2019:

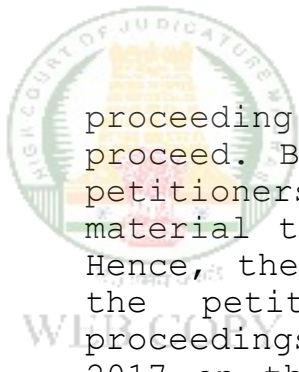
31. The petitioners/Accused Nos.1 to 21 and 23 to 27 stood charged for the offences under Sections 143, 188 and 341 of the Indian Penal Code. Relating to a dispute for renovating one Sudalai Madan Swamy Temple, the petitioners have conducted agitation without obtaining necessary permission. But, on a perusal of the First Information Report, it could be seen that absolutely, there is no averment relating to promulgation of any order by the lawful authority under Section 188 of the Indian Penal Code.

32. To bring home an offence under Section 341 of the Indian Penal Code, the prosecution should establish that the person wrongfully restrains any person so as to prevent the person from proceeding in any direction in which the person has a right to proceed. But the material available on record shows that the petitioners have only conducted a peaceful agitation and there is no material to show that they have wrongfully obstructed any person. In the above circumstances, the offences under Sections 341 and 143 of the Indian Penal Code will not attract the case of the petitioners. Thus, no *prima facie* case is made out against the petitioners for the aforesaid offences, hence, the criminal proceedings initiated against the petitioners in Crime No.72 of 2019 on the file of the first respondent, is liable to be quashed and accordingly, it is quashed.

Crl.O.P. (MD) .No.9270 of 2019:

33. The petitioners/Accused Nos.1 to 28 stood charged for the offences under Sections 143, 188 and 341 of the Indian Penal Code. The allegation is that the petitioners conducted an agitation demanding to waive the agricultural loan to the agriculturists without obtaining any permission from the authority concerned. From the perusal of the materials available on record, it could be seen that there is no lawful order passed by the authority concerned, which has been willfully disobeyed by the petitioners, hence, the offences under Sections 143 and 188 of the Indian Code will not attract.

34. To bring home an offence under Section 341 of the Indian Penal Code, the prosecution should establish that the person voluntarily obstruct any person so as to prevent the person from



proceeding in any direction in which the person has a right to proceed. But the materials available on record only show that the petitioners only conducted a peaceful agitation and there is no material to show that they have voluntarily obstructed any person. Hence, the offence under Section 341 is also not made out against the petitioners. In the above circumstances, the criminal proceedings initiated against the petitioners in Crime No.224 of 2017 on the file of the first respondent, is liable to be quashed and accordingly, it is quashed.

Cr1.O.P. (MD) .No.9357 of 2019:

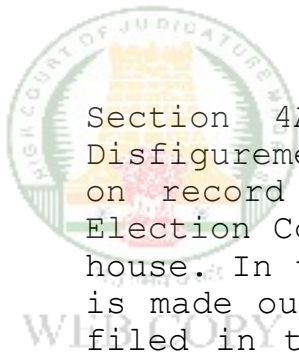
35. The petitioner/Accused No.1 stood charged for the offences under Sections 341, 143 and 188 of the Indian Penal Code. The petitioner and other accused persons, being the followers of a political party, for the purpose of welcoming their party leader, have formed an unlawful assembly in front of the Aundipatty bus stop, hence, they have committed the aforesaid offences.

36. From the perusal of the materials available on record, it could be seen that there is no lawful order passed by the authority concerned, which has been willfully disobeyed by the petitioner, hence, the offences under Sections 143 and 188 of the Indian Code will not attract the petitioner's case.

37. To bring home an offence under Section 341 of the Indian Penal Code, the prosecution should establish that the person voluntarily obstruct any person so as to prevent the person from proceeding in any direction in which the person has a right to proceed. But the materials available on record show that the petitioner only gathered to receive a party candidate and there is no material to show that he has voluntarily obstructed any person. Hence, the offence under Section 341 is also not made out against the petitioner. In the above circumstances, the criminal proceedings initiated against the petitioner in C.C.No.141 of 2011 on the file of the learned Judicial Magistrate, Andipatti, Theni District, is liable to be quashed and accordingly, it is quashed.

Cr1.O.P. (MD) .No.9448 of 2019:

38. The petitioner/sole Accused stood charged for the offences under Sections 171(F), 188 of the Indian Penal Code and Section 4A(1a) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959. The allegation against the petitioner is that, when the Election Code of Conduct was in force, the petitioner has hoisted his party flag in his house without obtaining permission from the Election Commission. The allegation seems to be very strange. The petitioner only hoisted a party flag, in which he belongs, in his own house. It is not known how it violates the provision of Sections 171(F), 188 of the Indian Penal Code and



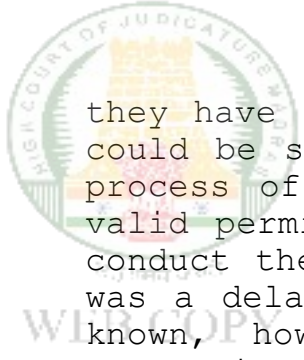
Section 4A(1a) of the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959. Absolutely, there is no material available on record to show that, an order has been promulgated by the Election Commission prohibiting hoisting any party flag in their own house. In the above circumstances, *prima facie*, none of the offences is made out against the petitioner. The criminal complaint has been filed in total abuse of process of law. Hence, it is liable to be quashed. Accordingly, the criminal proceedings initiated against the petitioner in S.T.C.No.400 of 2019 on the file of the learned Judicial Magistrate No.1, Sivakasi, is quashed.

Cr1.O.P. (MD) .No.9938 of 2019:

39. The petitioners stood charged for the offences under Sections 143, 188 and 283 of the Indian Penal Code. The allegation against the petitioners is that in a temple festival, on 12.04.2018, at about 12.00 p.m., in the mid night, the petitioners have drawn a temple car in the main road and displayed fire works, thereby, committed the offences. A perusal of the materials available on record would go to show that, the petitioners conducted temple festival, after obtaining necessary permission from the Deputy Superintendent of Police, Ambasamudram, and the petitioners have only drawn a temple car during mid night, after obtaining necessary permission. Hence, the offences under Sections 188 and 143 of the Indian Penal Code will not attract in this case. Likewise, there is no material available on record to show that they have obstructed a public way so as to attract Section 283 of the Indian Penal Code. To attract an offence under Section 283 of the Indian Penal Code, it should be proved that the accused by doing any act, or by omitting to take order with any property in his possession or under his charge, causes danger, obstruction, or injury to any person, in any public way. In the instance case, absolutely, there is no material available on record to show that the petitioners have committed the offence under Section 283 of the Indian Penal Code, they have peacefully conducted the car festival after obtaining permission. Hence, no offence is made out against the petitioners. In the above circumstances, the criminal proceedings initiated against the petitioners in Crime No.232 of 2013 on the file of the respondent police, is liable to be quashed and accordingly, it is quashed.

Cr1.O.P. (MD) .No.10076 of 2019:

40. The petitioners/Accused Nos.1 to 3 stood charged for the offences under Sections 188 and 143 of the Indian Penal Code. The allegation against the petitioners is that the petitioners got permission from the Commissioner of Police, Madurai City, to conduct a Vinayagar Idol procession festival on 15.09.2018. As per the above order, the procession should start at about 17.00 hours, instead, they have commenced the procession only at about 17.15 hours. Hence,



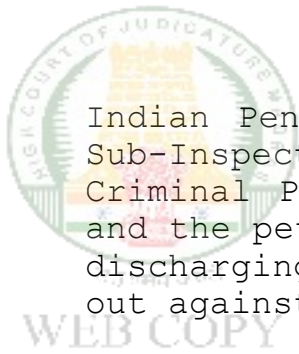
they have committed the offences. From a perusal of the record, it could be seen that the complaint has been filed in clear abuse of process of law. It is an admitted fact that the petitioners got valid permission from the Commissioner of Police, Madurai City, to conduct the procession. But, while conducting the procession, there was a delay of 15 minutes in commencing the procession. It is not known, how the offence will be attracted, by commencing the procession late by 15 minutes. That apart, a crime has been registered against only four persons. In the above circumstances, the petitioners cannot be charged with for an offence under Section 143 of the Indian Penal Code. Thus, the entire criminal proceedings initiated against the petitioners in S.T.C.No.1600 of 2019 pending on the file of the learned Judicial Magistrate No.1, Madurai, is liable to be quashed and accordingly, it is quashed.

Cr1.O.P. (MD) .No.11100 of 2019:

41. The petitioners/Accused Nos.1 to 7 stood charged for the offences under Sections 147, 341, 188 and 353 r/w Section 149 of the Indian Penal Code. The allegation against the petitioners is that on 30.08.2014 all the petitioners have conducted a Vinayagar idol procession and there was a scuffle between the police and the petitioners. Consequently, they have indulged in agitation against the police, which leads to filing the criminal complaint. Now, the petitioners have been charged with for the offences under Sections 147, 341, 188, and 353 r/w 149 of the Indian Penal Code.

42. To constitute the offence of rioting, the prosecution should establish that the accused persons, being five or more in number, formed an unlawful assembly, they were animated by a common object, and force or violence was used by the unlawful assembly or any member of it in prosecution of the common object. Likewise, Section 149 of the Indian Penal Code makes every member of an unlawful assembly at the time of committing an offence is guilty of an offence, creating a vicarious liability for the unlawful act committed, pursuant to the common object by any other member of the assembly. But, from the materials available on record, it could be seen that there was a Vinayagar idol procession on the date of occurrence, and there was wordy quarrel between the petitioners and the police, thereafter, in condemning the police activities, the petitioners conducted agitation. It is settled law that mere presence in the unlawful assembly cannot hold a person liable, unless there is a common object and he was actuated by the common object. But, in the instant case, the materials available on record would show that they are participating in the idol procession, thereafter, condemning the police, they have made an agitation. Hence, it cannot be considered as an unlawful assembly and they are all actuated by a common object of doing any illegal act.

43. So far as the offence under Section 353 of the



Indian Penal Code is concerned, from the statement of the Special Sub-Inspector of Police recorded under Section 161(3) of the Code of Criminal Procedure, it is not known who has attacked the police, and the petitioners used a criminal force to prevent the police from discharging the public duty and, no *prima facie* offence is made out against the petitioners for that offence.

44. To bring home an offence under Section 341 of the Indian Penal Code, the prosecution should establish that the person voluntarily obstruct any person so as to prevent the person from proceeding in any direction in which the person has a right to proceed. But the materials available on record only show that the petitioners only conducted an agitation and there is no material to show that the petitioners have voluntarily obstructed any person. Hence, the offence under Section 341 is also not made out against the petitioners. In the above circumstances, the entire criminal proceedings initiated against the petitioners in C.C.No.51 of 2016 on the file of the learned Judicial Magistrate No.IV, Tirunelveli, is liable to be quashed and accordingly, it is quashed.

Crl.O.P. (MD) .No.11109 of 2019 :

45. The petitioners/Accused Nos.2 to 7 stood charged for the offences under Sections 341, 143 and 188 of the Indian Penal Code. The petitioners and other accused persons, being the followers of a political party, for the purpose of welcoming their party candidate in assembly election, have formed an unlawful assembly in front of the Aundipatty bus stop, hence, they have committed the aforesaid offences.

46. From the perusal of the materials available on record, it could be seen that there is no lawful order passed by the authority concerned, which has been willfully disobeyed by the petitioners, hence, the offences under Sections 143 and 188 of the Indian Code will not attract the petitioners' case.

47. To bring home an offence under Section 341 of the Indian Penal Code, the prosecution should establish that the person voluntarily obstruct any person so as to prevent the person from proceeding in any direction in which the person has a right to proceed. But the materials available on record only show that the petitioners only gathered to receive the party candidate and there is no material to show that they have voluntarily obstructed any person. Hence, the offence under Section 341 is also not made out against the petitioners. In the above circumstances, the criminal proceedings initiated against the petitioners in C.C.No.141 of 2011 on the file of the learned Judicial Magistrate, Andipatti, Theni District, is liable to be quashed and accordingly, it is quashed.

48. In fine, all the Criminal Original Petitions are allowed. Consequently, the connected miscellaneous petitions are



SD
ASSISTANT REGISTRAR

TRUE COPY

WEB COPY

SUB ASSISTANT REGISTRAR (CS)

To

- 1.The Principal District Munsif Cum Judicial Magistrate Court,
Karaikudi
- 2.The Prl Dist Cum JM Court,
Karaikudi
- 3.The Judicial Magistrate Court No.1,
Sivakasi
- 4.The Judicial Magistrate Court No.1,
Sivakasi
- 5.The Judicial Magistrate No.II,
Sattur, Virudhunagar District
- 6.The JUDICIAL MAGISTRATE No.I,
Sivagangai, Sivagangai District
- 7.The Judicial Magistrate No.II, Madurai
- 8.The Judicial Magistrate No.II, Sattur
- 9.The Judicial Magistrate No.I, Sivakasi
- 10.The Judicial Magistrate No.I, Madurai
- 11.The Judicial Magistrate No.IV, Tirunelveli
- 12.The Judicial Magistrate, Andipatti, Theni District.
- 13.The Inspector of Police
Sivakasi Town Police Station,
Virudhunagar District
- 14.The Inspector of Police
Sattur Town Police Station,
Virudhunagar District.



15.The Inspector of Police

Sivagangai Town Police Station, Sivagangai District.

16.The Inspector of Police,

Karaikudi North Police Station, Sivagangai District.

17.The Inspector of Police

C4- Thilagarthidal Police Station,

(L and O), Madurai City, Madurai District

18.The Inspector of Police

Karaikudi North Police Station, Sivagangai District.

19.The Inspector of Police,

Rajakkamangalam Police Station, Kanyakumari District

20.The Inspector of Police

Devakottai Town Police Station, Sivagangai District

21.The Inspector of Police

Vikkiramasingapuram Police Station, Tirunelveli District

22.The Inspector of Police

Vilakkuthoon P.S., Madurai City.

23.The Inspector of Police

Mela Palayam Police Station, Tirunelveli

24.The Sub Inspector of Police

Andipatti Police Station, Theni District

25.The Additional Public Prosecutor,

Madurai Bench of Madras High Court, Madurai.



2CC'S TO MR. M. JOTHIBASU, ADVOCATE SR 84731, 84732

2CC'S TO MR. S. MALAIKANI, ADVOCATE SR 84677, 84678

1CC TO MR B. SANTHANAM RAJESH KUMAR, ADVOCATE SR 84956

WILDCOM 1CC TO MR. S. RAMASAMY, ADVOCATE SR 84735

1CC TO M/S. POLEX LEGAL SOLUTIONS, ADVOCATES SR 84749

1CC TO MR. C.T. PERUMAL ADVOCATE SR 84747

1CC TO MR. S.M. SANJAY, ADVOCATE SR 84788

2CC'S TO MR S. BALAJI, ADVOCATE SR 84752 84753

1CC TO MR. S RAVI, ADVOCATE SR 84716

1CC TO MR. K.NEELAMEGAM, ADVOCATE SR 84722

1CC TO MR. P. SUBBIAH, ADVOCATE SR 84771

Common Order made in
Crl.O.P. (MD) .Nos.7922, 7923, 8827, 10166, 10315, 10319, 10362,
11229, 8861, 9270, 9357, 9448, 9938, 10076, 11100
and 11109 of 2019

Delivered on: 30.08.2019

CS (25.09.2019) 32P 40C