



WEB COPY

CrI.OP(MD)No.13442 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 05.04.2019

PRONOUNCED ON : 04.07.2019

CORAM

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CrI.OP(MD)No.13442 of 2017

and

CRL.MP(MD)Nos.9046 of 2017 & 2173 of 2019

Murugaiahpandian

... Petitioner

Vs.

1.State through the Inspector of Police,  
Seithur Rural Police Station,  
Seithur, Rajapalayam Taluk,  
Virudhunagar District.  
[Crime No.323 of 2017]

..1<sup>st</sup> Respondent/Complainant

2.Ganapathy

.. 2<sup>nd</sup> Responden/De-facto Complainant

**Prayer:** Petition filed under Section 482 of the Criminal Procedure Code seeking to call for the records pertaining to FIR in Cr.No.323 of 2017, on the file of the Inspector of Police, Seithur Rural Police Station, seithur, the 1<sup>st</sup> respondent herein and quash the same by allowing this CrI.O.P.

For Petitioner  
For Respondents

: Mr.M.Thirunvukkarasu  
: Mr.R.Anandaraj  
Additional Public Prosecutor  
for R.1

No appearance for R.2

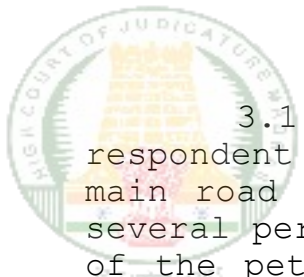
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### **ORDER**

This Criminal Original Petition has been filed by the petitioner to quash the First Information Report in Crime No.323 of 2017, pending on the file of the Inspector of Police, Seithur Rural Police Station, Seithur.

2. The first respondent Police registered the case in Crime No.323 of 2017 against the petitioner herein and few others for the offences punishable under Sections 143, 188, 285 IPC r/w Section 7 (1) (A) of Criminal Law Amendment Act, 2005.

3. The facts of the case, in brief, are as follows:



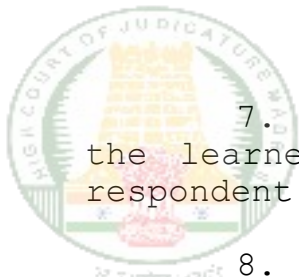
3.1. On 12.09.2017, around 4.00 pm, when the second respondent along with Police Constables, were on patrolling, on the main road near Kottai Vinayagar Temple, Five Shop Bazzar, Seithur, several persons belonging to a political party, under the leadership of the petitioner, had assembled in an unlawful manner and raised slogans against the Hon'ble Chief Minister of Tamil Nadu. The Police warned the mob to disperse in view of the promulgation order under Section 30(2) of the Police Act. Despite the warning given by the Police, the mob did not disperse and all of a sudden, they set ablaze the effigy of the Hon'ble Chief Minister of Tamil Nadu. When the Police tried to prevent the same, the mob threatened that they would vandalise the Government Buses and when the Police tried to arrest those persons, they all fled the spot.

3.2. In this backdrop, the case in Crime No.323 of 2017 came to be registered against the petitioner herein and few others, for the offence punishable under Sections 143, 188, 285 IPC r/w Section 7(1)(A) of Criminal Law Amendment Act, 2005, came to be registered. Aggrieved, the petitioner is before this Court, seeking to quash the same.

4. The learned Counsel for the petitioner submitted that there are no incriminating materials available in this case, so as to attract Sections 143, 188 and 285 IPC r/w 7(1)(A) of Criminal Law Amendment Act, 2005. The petitioner has been unnecessarily roped-in in this case. He would contend that subsequent to the registration of the case in Crime No.323 of 2017, against the petitioner, another case in Crime No.687 of 2017 has been registered against the petitioner. Therefore, it is clear that out of political vendetta, the impugned FIR was registered against the petitioner.

5. Relying upon the decision of a Division Bench of this Court, reported in **2015-3-L.W.-528 [A.Santhos Yadav v. The Bar Council of Tamil Nadu and others]**, the learned counsel for the petitioner contended that mere burning of an effigy by itself would not amount to an offence, unless it is proved that such a burning was likely to cause hurt or injury to any other person. The learned counsel further contended that as per the latest decision of this Court reported in **2018-2-L.W.(Crl.) 606 [Jeevanandham and others v. Inspector of Police, Velayuthampalayam Police Station, Karur District]**, the respondent Police do not have the authority to register a case for an offence punishable under Section 188 IPC.

6. Per contra, the learned Additional Public Prosecutor appearing for the first respondent, on instructions, submitted that based on the complaint lodged by the second respondent, who was the then Sub-Inspector of Police, the first respondent police registered the case and the same is pending investigation.



7. Heard the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the first respondent. There is no representation for the second respondent.

8. The second respondent / then Sub-Inspector of Police, on 12.09.2017, has lodged the complaint that on 10.06.2015, the petitioner and others have assembled unlawfully and raised slogans against the Hon'ble Chief Minister and when the Police party attempted to disburse the mob in view of the promulgation order, the persons have set ablaze the effigy of the Hon'ble Chief Minister and therefore, they have registered the present complaint.

9. A Division Bench of this Court, in the decision reported in **2015-3-L.W.-528 [A.Santhos Yadav v. The Bar Council of Tamil Nadu and others]**, has held that mere burning of an effigy by itself would not amount to an offence, unless it is proved that such a burning was likely to cause hurt or injury to any other person. For better appreciation, the relevant portion from the said decision is extracted hereunder:

"9. A careful reading of Section 285 would show that mere burning of an effigy by itself, is 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 an other person, is made punishable. Therefore, acting rashly or negligently so as to endanger human life or in the manner likely to cause hurt or injury, is a sine qua non for making an act come within the meaning of Section 285.

10. Since there is no provision in the IPC, which makes the burning of effigies a punishable offence, the police invariably charge persons, who burn effigies, only for an offence under Section 285 or at the most under Section 286. In the case on hand, the very final report filed by the police shows that the petitioner was charged with an offence under Section 285 only for the act of burning the effigy of a political leader.

11. It may be of interest to note that the burning of effigies has its roots in history, culture as well as the religion of several countries throughout the world.

12. Megha Bhagat, who was a disciple of Tulsidas - the author of Ram Charitha Manas, seems to have organized Ram Leela Shows way back in the early 17th Century. Ever since



country. On the last day of the Show, the effigy of Ravana is burnt and the triumph of good over evil is celebrated by this last act of burning of the effigy of Ravana.

13. At about the same time, in the early 17th Century, a similar practice appears to have emerged in England. It is stated that the Catholic dissident Guy Fawkes and 12 of his friends hatched a conspiracy to blow up King James I of England during the opening of Parliament on November 5, 1605. But, the assassination attempt was foiled the previous night, when Fawkes was discovered in a cellar below the House of Lords. Londoners immediately began lighting of bonfires in celebration that the plot had failed. Few months later, the Parliament declared November 5 as a public day of thanksgiving. Ever since then, Guy Fawkes Day also known as Bonfire Night, is celebrated in one form or the other. During the celebrations, the effigies of Guy Fawkes along with that of politicians and celebrities of the current day are also burnt as a mark of protest. This is why the burning of effigy was not made an offence in England".

10. In this case, the petitioner along with others are said to have burnt the effigy of the Hon'ble Chief Minister of Tamil Nadu and there is no material to show that the act of the petitioner in burning the effigy was likely to cause hurt or injury to any other person and they have acted in a rash and negligent manner, so as to endanger human life. Therefore, in the light of the aforesaid dictum laid down by a Division Bench of this Court, this Court is of the view that the offence under Section 285 IPC would not lie.

11. Insofar as the offence under Section 188 IPC is concerned, this Court in **2018-2-L.W. (Crl.) 606 (cited supra)**, after a detailed discussion, has held that Police do not have the authority to register a case for the offence under Section 188 IPC and it is only the public servant concerned / authorised, who can give a complaint in writing before the jurisdictional Magistrate. It is further held that the written complaint of the public servant concerned should also reflect the necessary ingredients, such as i) the details with regard to the order promulgated by a lawfully empowered public servant; ii) that knowing fully well and being directed to abstain from doing so, has disobeyed the order; and iii) such disobedience cause / tends to cause annoyance, danger to human life, safety or riot. For better appreciation, the directions issued in the said decision are extracted hereunder:

"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 empowered; or

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

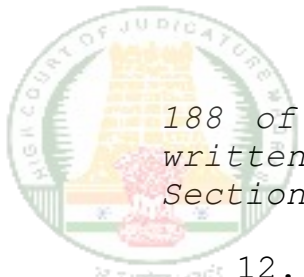
(c) a riot or affray.

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.”

12. With regard to the offence under Section 143 IPC, this Court in **2018-2-L.W. (Crl.)-606 (cited supra)**, has held as follows:

“27. ...Insofar as the offence under Section 143 of IPC is concerned, in all the cases, the concerned Police Officer has quoted Section 30(2) of the Police Act and therefore, has straight away proceeded to register an FIR under Section 143 of IPC. As stated above, a mere violation of the so called promulgation under Section 30(2) of the Police Act will not make out an offence under Section 143 of IPC by straight away declaring an assembly of persons to be an unlawful assembly. The power under Section 30(2) of the Police Act is merely regulatory in nature. In fact, Section 32 of the Police Act itself provides for a penalty for disobeying an order issued under Section 30(2) of the Police Act with a punishment of a fine not exceeding 200 rupees. Whereas an offence under Section 143 of IPC is punishable with imprisonment for a term which may extend to 6 months. Therefore, a violation of the so called promulgation under Section 30(2) of the Police Act will not by itself constitute an offence under Section 143 of IPC. In all the cases, the assembly of persons were made to express dissatisfaction of the governance and claiming for minimum rights that are guaranteed to a ordinary citizen. If such an assembly of persons are to be trifled by registering an FIR under Section 143 of 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.”

13. In the First Information Report, there is no averment as to the date of passing of the promulgation order under Section 30(2) of the Police Act, 1861. It simply read that when the promulgation order is in force, the petitioner and others assembled unlawfully and burned the effigy. But, there is no specific averments as to the same. A very reading of the First Information Report does not make out an offence under Section 143 IPC. Since the first respondent Police has registered the case for the offence punishable under Section 188 IPC, the same is also not maintainable, as it has to be lodged in writing by the public servant concerned before the jurisdictional Magistrate, which should also reflect the necessary ingredients, such as i) the details with regard to the order promulgated by a lawfully empowered public servant; ii) that knowing fully well and being directed to abstain from doing so, has disobeyed the order; and iii) such disobedience cause / tends to



14. In view of the foregoing discussions, this Court is of the view that the First Information Report in Crime No.323 of 2017, on the file of the Inspector of Police, Seithur Rural Police Station, Seithur, is liable to be quashed and the same is accordingly, quashed insofar as the petitioner is concerned. In fine, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS )

dsk/gk

To

- 1.The Inspector of Police,  
Seithur Rural Police Station,  
Seithur, Rajapalayam Taluk,  
Virudhunagar District.
- 2.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+1 CC to Mr.M.THIRUNAVUKKARASU, Advocate SR-73297.

**Crl.OP(MD)No.13442 of 2017**

**and**

**CRL.MP(MD)Nos.9046 of 2017 & 2173 of 2019**

**04.07.2019**

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