



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2021

CORAM :

THE HONOURABLE **Mr. JUSTICE G.ILANGO VAN**

Crl.O.P. (MD)No.5023 of 2021

and

Crl.MP. (MD) .No.2871 of 2021

1. Selvakumar
2. Muthuraman
3. Anantharaman ... Petitioners/Accused Rank not Known
Vs.

1. The State rep by
Sub Inspector of Police,
Sipcot Police Station,
Manamadurai,
Sivagangai District. ...1st Respondent /Complainant

2. Manickam
Village Administrative Officer,
No.22, KK Pallam Group,
Manamadurai,
Sivagangai District. ... Respondent/Defacto Complainant

Prayer : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the FIR in Crime No.38 of 2018 on the file of the 1st respondent and quash the same in so far as the petitioner is concerned.

For Petitioners : Mr.B.Prahalad Ravi

For Respondents : Mr.R.Srinivasan,
Government Advocate (Crl.Side)

ORDER

This petition is filed seeking quashment of FIR in Crime No.38 of 2018 on the file of the first respondent.

2. The case of the prosecution is that on 20.03.2018 at about 10.30 a.m., the accused persons mentioned in the FIR assembled in the place of occurrence to protest against the permission granted by the District Administration for lifting sand from kanmai situated in



Seikalathur and caused disturbances and trouble to the public. Based upon the complaint given by the Village Administrative Officer, the case in Crime No. 38 of 2018 under Sections 143 & 188 of I.P.C., was registered and investigation is now under way. Seeking quashment of First Information Report, this petition is filed.

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3. Heard both sides.

4. The learned counsel for the petitioner relied upon the Judgement of this Court ***in the case of Jeevanandam and others Vs Inspector of Police, Viralimalai Police Station and others*** would contend that offence under Section 188 of I.P.C., is a noncognisable offence, but as per the Sections 195(1) a(1) of Criminal Procedure Code, the competent person to file a complaint is the Public Servant. So, Police is not competent to register the case under Section 188 of IPC. In this Court, after going through the entire law on that point have given directions wherein, it has been held that police officer cannot register FIR for any of the offences under Sections 172, 188 of I.P.C. When the offence is committed in the presence of the police officer, he is permitted to take action only under Section 41 of C.R.P.C. After taking an action he has to inform the public servant, who can give a complaint right before the concerned jurisdiction Magistrate and only after that the Magistrate take cognisance under Section 188 of I.P.C. So the registration of the F.I.R in this case is perfectly invalid under law.

5. The second offence that has been alleged against these petitioners is that they have assembled in the place of occurrence. Even reading of the FIR itself shows that they have assembled in the place of occurrence only to protest against the permission granted by the District Administration over the mining activities. Protest and demonstration are part and parcel of the democratic set up and the people are well within the power to make the protest. None of the allegation mentioned in the First Information Report will attract any of the ingredients mentioned under Section 141 I.P.C., Moreover, it is not a case of the prosecution that a prohibitory order was imposed during the relevant time.

6. As mentioned earlier, protest and demonstration are part and parcel of the process of democracy and freedom of assembly and expression if only turns violent, it is liable to be penalised. But it was a peaceful Protest and no offence is reported. So the First Information Report is liable to be quashed.



7. Accordingly, this Criminal Original Petition stands allowed, F.I.R in Crime No.38 of 2018 on the file of the first respondent Police stands quashed. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar (W)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Note In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

kmm

To

1. The Sub Inspector of Police,
State of Tamil Nadu,
Sipcot Police Station,
Manamadurai,
Sivagangai District.

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

3.+1 CC to M/s.B.PRAHALAD RAVI, Advocate (SR-17665[F] dated 27/04/2021)

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GS (10.06.2021) 3P 4C