



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.07.2021

CORAM:

THE HONOURABLE MR.JUSTICE G. ILANGO VAN,

Crl.O.P. (MD) No.4819 of 2021 and

Crl.M.P(MD) No.2744 of 2021

Astile Sebas

... Petitioner/Accused

Vs.

1. State represented by
The Sub Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.
(Crime No.355/2020)

... 1st Respondent /Complainant

2.S.Ramesh

... 2nd Respondent / Defacto -
Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating to the impugned F.I.R, registered in Crime No.355 of 2020, dated 13.04.2020, on the file of the first respondent and quash the same.

For Petitioner : Mr.M.Saravanan

For R1 : Mr.R.M.Anbunithi

Additional Public Prosecutor

ORDER

This petition has been filed to quash the First Information Report in Crime No.355 of 2020, dated 13.04.2020, on the file of the first respondent.

2.The complaint against this petitioner is that during the pandemic period, while the Government's Prohibitory Order under Section 144 Cr.P.C was in force, the petitioner was roaming around the area in Bullet Motor cycle bearing Reg.No.TN 75 AE 1235. So, on the basis of the complaint given by the Sub Inspector of Police, Thukalay Police Station, a case has been registered against the petitioner, for the offences punishable under Sections 188, 269 IPC and under Section 3 of Epidemic Decease Act, 1897 r/w 51(b) of Disaster Management Act, 2005.

3.Seeking quashment of the First Information Report, this petition came to be filed.

4.Heard both sides.

5.The learned counsel for the petitioner would submit that at the time of alleged occurrence, he was a student of Engineering College and on that particular date, i.e on 13.04.2020, his mother fell fainted and sustained injuries and for the purpose of



purchasing medicines, he was going to the shop, at that time, he has been arrested. The mother of the petitioner was admitted in Joseph Hospital, Azhakiyamandapam, Mulagumoodu. Kanyakumari District. The petitioner has produced a medical certificate from the concerned Hospital, wherein we see that the mother of the petitioner admitted in the above said Hospital for treatment on 13.04.2020, from 09.00 am to 8.00 pm. Even though according to the petitioner, he went out only for the purpose of getting medicines for her mother, that ground cannot be taken into account at this stage. But, the fact remains that for the offences punishable under Section 188 IPC, the police officer has no power to register First Information Report and investigate the matter without proper permission from the concerned Jurisdictional Magistrate. It is seen that the offence under Section 188 IPC is non cognizable offence, in respect of which, First Information Report has been filed by the police and this position has been settled by this Court in the judgment reported in **2018 2 LW (crl) 606 Jeevanandham and other Vs. Inspector of Police, Sivakasi Town Police Station, Virudhunagar District]**, dated 20.09.2018, wherein it was held that no such power is available to the police officers and series of directions have been issued to deal with such cases. On this ground, First Information Report registered under Section 188 IPC is liable to be quashed.

6.For the offences punishable under Section 269 IPC and under Section 3 of Epidemic Decease Act, 1897 r/w 51(b) of Disaster Management Act, 2005, it is seen that the petitioner was riding motor cycle in that area only as a casual outing or outing with purpose. Instead of registering case against the petitioner under Section 269 IPC, in my considered view, the police might have warned the petitioner to go home. It is also seen that at that time, he was an engineering student, studying in St.Xavier's Catholic College of Engineering, Chunkankadal, Kanyakumari District. Being a student, the pendency of this case should not spoil his future. More over, as mentioned earlier, non-intentional outing should not be taken seriously. It is also to be noted that the Government has also proposed to drop all such cases, which have been registered against the public during pandemic period. But, so far Government Order has not been passed. It is also seen that due to the pendency of this case, Passpost Enquiry of the petitioner is also not completed.

7.Taking totality of the circumstance, the First Information Report in Crime No.355 of 2020, on the file of the first respondent police is required to be quashed and accordingly, the same is quashed and the Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AE)

// True Copy //



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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.

To

1. The Sub Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M. SARAIVANAN, Advocate (SR-23252[F] dated 20/07/2021)

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RC (27.07.2021) 3P-4C