



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2021

CORAM:

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

Crl.O.P.(MD)No.5085 of 2021

and

Crl.M.P(MD) No.2905 of 2021

Thandapani @ R.Dhandapani

... Petitioner

Vs.

1.State through

The Inspector of Police,  
Town North Police Station,  
Dindigul District.

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

2.K.Alaguraj

The Sub Inspector of Police,  
Town North Police Station,  
Dindigul District.

... 2<sup>nd</sup> Respondent/  
De facto complainant

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in S.T.C.No.664 of 2019 on the file of the learned Judicial Magistrate No.I, Dindigul District and quash the same as arbitrary and illegal.

For Petitioner

: Mr.A.Arul Jenifer

For R-1

: Mr.R.Anandharaj

Additional Public Prosecutor

### O R D E R

This petition has been filed to quash the proceedings in S.T.C.No.664 of 2019 on the file of the learned Judicial Magistrate No.I, Dindigul District.

2.The case of the prosecution in brief is that on 27.07.2017, the accused persons in Crime No.557 of 2017 on the file of the first respondent herein have gathered in mass without seeking permission from the authorities and performed human chain protest near periyar statue in Dindigul town and demonstrated the protest against the implementation of NEET examination. Hence, a case was registered against the petitioner and other persons under Sections 145, 188 and 342 of IPC. After completion of investigation, the final report was filed, which was also taken on file by the learned Judicial Magistrate No.I, Dindigul District, in S.T.C.No.664 of 2019.



3. Seeking quashment of this case, the petitioner has filed this petition mainly on the ground that the complaint lodged by the second respondent is illegal, since there is a bar under Section 195 (1) (a) (i) of Cr.P.C.

4. According to the learned Additional Public Prosecutor for the respondent police, in respect of Crime No.557 of 2017, totally 31 accused were arrayed, out of which, 23 persons filed a petition in Crl.O.P(MD) No.19696 of 2019 before this Court and this Court by its order dated 01.01.2020, quashed the proceedings based upon the judgment of this Court in the case of **Jeevanandham and other Vs. Inspector of Police, Sivakasi Town Police Station, Virudhunagar District**, reported in **2018 2 LW (crl) 606** dated 20.09.2018. The facts and circumstances of the case squarely applies to this case also. It is also brought to the notice of this Court that the remaining persons have not approached this Court for the similar relief.

5. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the first respondent.

6. The main allegation that has been levelled against the petitioner is that inspite of a ban order imposed by the police, without permission the petitioner along with others gathered together near periyar statue in Dindigul town and performed a human chain protest. According to the petitioner, the facts and circumstances of the case is squarely covered in the judgment of this Court reported in 2018 2 LW (crl) 606 in the case of jeevanandham and other Vs. Inspector of Police, Sivakasi Town Police Station, Virudhunagar District and other, wherein paragraph No.25 certain guidelines issued by this Court, which are reproduced herein for ready reference:-

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.

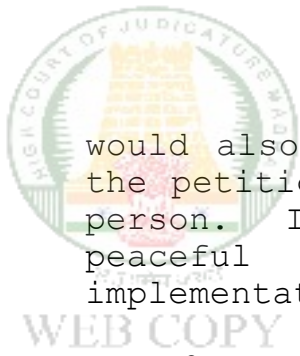
e) The promulgation issued under Section 30(2) of the Police Act, 1861, must satisfy the test of reasonableness and can only be in the nature of a regulatory power and not a blanket power to trifle any democratic dissent of the citizens by the Police.

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.

7. It is seen that the guidelines that has been prescribed in the above said judgment was not followed by the respondent police, while registering a case and filing the final report. The offence under Section 342 of I.P.C., will not arise and the ingredients



would also not attract. There is no allegation to the effect that the petitioner along with others illegally detained or obstructed any person. It appears that they have conducted a demonstration in a peaceful manner by expressing their grievance against the implementation of the NEET examination.

8. Considering the facts and circumstances of the case, the entire proceedings in S.T.C.No.664 of 2019 on the file of the learned Judicial Magistrate No.1, Dindigul, stands quashed, even in respect of the persons who have not filed a petition for the similar relief. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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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 Judicial Magistrate No.I,  
Dindigul District.
- 2.The Inspector of Police,  
Town North Police Station,  
Dindigul District.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

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NSM(CO)  
KB(12.05.2021) 4P 4C