



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2021

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGO VAN

Crl.O.P. (MD)No.5692 of 2021

and

Crl.M.P. (MD)No.3287 of 2021

Rajantennison

... Petitioner

Vs.

1.State Represented by
The Inspector of Police,
Munneerpallam Police Station,
Tirunelveli District.
(In Crime No.345 of 2020)

2.Maruthakutty

... Respondents

Prayer : Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records of the impugned First Information Report in Crime No.345 of 2020 on the file of the first respondent police station and quash the same as illegal.

For Petitioner	: Mr.K.Manimaran
For R1	: Mr.K.Suyambulinga Bharathi
	Government Advocate (Criminal side)\

ORDER

The present petition is filed seeking quashment of the First Information Report in Crime No. 345 of 2020 pending on the file of the first respondent police.

2.The case of the prosecution is that on 01.05.2020 at about 08.00 a.m., the second respondent along with his team were monitoring near Aaraikulam Junction due to Covid-19 lock down, at that time, the petitioner came in a two wheeler bearing Registration No.TN-76-V-2462 Bajaj Discover violated the Government order. So, the vehicle was seized and a case in Crime No.345 of 2020 was registered for the alleged offence under Sections 188 and 269 of IPC. 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.

3.The learned Government Advocate (Criminal side) for the respondent police would submit that the facts of the case are exactly similar to the case covered in the decision reported in **2018 2 LW (crl) 606 [Jeevanandham and other Vs. Inspector of Police, Sivakasi Town Police Station, Virudhunagar District], dated 20.09.2018.**

4.Heard the learned counsel on either side.

5.The petitioner is facing charge under Sections 188 and 269 of IPC before the learned Judicial Magistrate, Cheranmahadevi. Eventhough the investigation is completed, charge sheet was not taken on file by the concerned Court. The main allegation against the petitioner is that against the protocol issued by the Government in view of Covid-19 situation, this petitioner was found roaming around in the public place in his two wheeler. An offence under Section 188 of IPC is a non-cognizable offence which cannot be investigated by the first respondent police without proper permission from the learned Judicial Magistrate, Charenmahadevi. According to the petitioner, the facts and circumstances of the case is squarely covered in the judgment by 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 were 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.

6. It is seen that the guidelines that have been prescribed in the above said judgment was not followed by the respondent police, while registering a case and filing the final report.

7. Considering the facts and circumstances of the case, the entire proceedings in Crime No.345 of 2020 on the file of the first respondent police stands quashed. Accordingly, this Criminal



Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

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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.

To

- 1.Judicial Magistrate,
No. 5, Tirunelveli.
- 2.The Chief Judicial Magistrate,
Tirunelveli.
- 3.The Inspector of Police,
Munneerpallam Police Station,
Tirunelveli District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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AS (08.06.2021) 3P 5C