



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 08.07.2021

Pronounced on : 10.08.2021

CORAM :

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

CrI.O.P. (MD)No.6114 of 2021

and

CrI.M.P. (MD)Nos.3513 and 3514 of 2021

WEB COPY

1.Karuppusamy

2.Siva

3.Jeevagan

...Petitioners/Accused 1 to 3

Vs.

1.State rep. by

The Inspector of Police,
Ayakudi Police Station,
Dindigul District.

(Crime No.141 of 2016)

...1st Respondent/Complainant

2.Murugesan

...2nd Respondents/Defacto
Complainant

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in respect of S.T.C.No.2494 of 2016 on the file of the learned Judicial Magistrate, Palani and quash the same.

For Petitioners : Mr.D.Venkatesh

For R1 : Mr.R.M.Anbunithi,
Addl. Public Prosecutor (CrI. Side)

ORDER

This petition is filed to quash the proceedings in S.T.C.No.2494 of 2016 on the file of the learned Judicial Magistrate, Palani.

2.The case of the prosecution is that on 01.05.2016 at about 06.30 p.m., when the defacto complainant inspected the second accused petrol bulk, they found that the first accused was engaged in issuing token to the public free petrol as bribe. This is committed on the eve of Assembly Election, 2016. The third accused alleged to have received a sum of Rs.10,000/- from the first accused towards selling of free petrol by receiving the token from the public. On the basis of the complaint given by the second respondent, a case in Crime No.141 of 2016 was registered for the offences under Sections 188, 171(E) and 171(H) of I.P.C. The investigation was undertaken and the materials were collected and the final report has been presented before the learned Judicial



Magistrate, Palani, which was taken on file in S.T.C.No.2494 of 2016. Challenging the final report and cognizance, the petition is filed by the petitioners.

3.Heard both sides.

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4.Section 188 is non-cognizable offence in nature. 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 specifically observed that in such cases, police is not empowered to register a case under Section 188 of I.P.C. More over, a reading of Section 188 of I.P.C., will also show that the ingredients of the offence are not attracted to the facts and circumstances of the case.

5.It is seen that Sections 171(E) and 171(H) are non-cognizable offence in nature, in which the police has no power to register a case and investigate the matter and file the final report without prior permission from the concerned Magistrate. The main allegation on the part of the prosecution against these petitioners is that as bribe, token was issued to the public for filing free petrol from the second accused's petrol bulk. The first accused belong to AIADMK political party and he issued token and based upon which, free petrol was alleged to have been supplied to the public. Even if we consider that the petitioners had committed the offences, the Hon'ble Karnataka High Court in **Andaneppa and Others Vs. State of Karnataka and Another in Criminal Petition No.101648 of 2017** has observed that the cognizance of offences 171(E) and 171(H) of I.P.C., is barred under Section 155(2) of Cr.P.C. The police is not empowered to investigate the matter and file final report. It is a mandatory provision and non-compliance of same will vitiate the entire proceedings.

6.The offences are being non-cognizable in nature, the police has no right to register a case and file the final report. The cognizance taken by the learned Judicial Magistrate, Palani under Sections 188 and 171(E) of I.P.C., is not valid under law.

7.In the result, this Criminal Original Petition is allowed and the proceedings in S.T.C.No.2494 of 2016 on the file of the learned Judicial Magistrate, Palani is quashed. Consequently, connected miscellaneous petitions are closed.

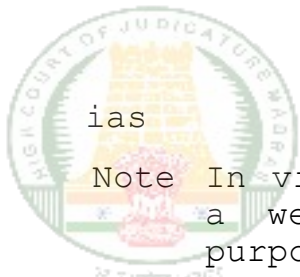
Sd/-

Assistant Registrar (W)

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/ /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,
Palani.
- 2.The Inspector of Police,
Ayakudi Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

Crl.O.P. (MD)No.6114 of 2021
10.08.2021

KS (CO)
KB(19.08.2021) 3P 4C