



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.07.2021

Pronounced on : 11.08.2021

CORAM :

THE HONOURABLE **Mr. JUSTICE G.ILANGOVAN**

Crl.O.P.(MD)No.7918 of 2020

and

Crl.M.P.(MD)Nos.3766 and 3767 of 2020

Prem Sankar ...Petitioner/Accused No 8
Vs.
1.The Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.
(In Crime No.229 of 2019) ...1st Respondent/Complainant
2.M.Tajnisha ...2nd Respondents/Defacto
Complainant

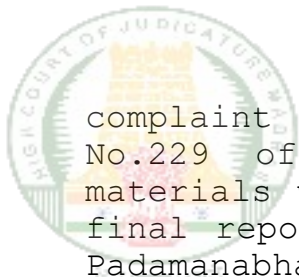
Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the impugned charge sheet in S.T.C.No.693 of 2019 on the file of the learned Judicial Magistrate Court No.I, Padmanabhapuram and to quash the same as far as this petition is concerned.

For Petitioner : Mr.M.R.Sreenivasan
For R1 : Mr.R.M.Anbunithi,
Addl. Public Prosecutor (Crl. Side)
For R2 : No appearance

ORDER

This petition is filed to quash the proceedings in S.T.C.No.693 of 2019 on the file of the learned Judicial Magistrate No.I, Padmanabhapuram.

2.The case of the prosecution is that on 15.04.2019, when the defacto complainant was on regular vehicle inspection duty near Azhagiya Mandapam, Padmanabhapuram, received a whatsapp message from the Sub Collector, Padmanabhapuram that several women members belonged of BJP political party are going to conduct peace procession from Manali to Mekka Mandapam supporting their political party. The defacto complainant went to the place and found that about 250 women members of the political party came to the place of occurrence by 12 vehicles and attended the procession. The vehicles as well as the vehicles drivers were identified. Based upon the



complaint given by the second respondent herein, a case in Crime No.229 of 2019 was registered, investigation was undertaken, materials were collected and after completion of the investigation, final report was laid before the learned Judicial Magistrate No.I, Padamanabhapuram. The case was taken on file in S.T.C.No.693 of 2019 and the cognizance was taken for the offences under Sections 171(H) and 188 of I.P.C. Challenging the final report and cognizance, the petition is filed by the petitioner.

3.Heard both sides.

4.A reading of the final report and the First Information Report shows that the political party members arrived in the place of occurrence in about 12 vehicles. But whether the political party members used goods vehicles or passengers vehicles are not clearly stated in the First Information Report. If it is a goods vehicle in which the political party members had been carried, certainly the offence under Motor Vehicles Act would be attracted. But there is no reference as I mentioned earlier to the effect that it is of the goods vehicle and probably, it would be passengers vehicles, which is also called as permit carriers. In the absence of such allegation to the effect that the political party members were carried unauthorizedly in a goods vehicles, even the offence under the provision of Motor Vehicle Act is not attracted. More over, in the First Information Report, there is no allegation to the effect that the offence of bribe has been committed by the petitioner. What has been stated is that without prior permission, the procession has been undertaken. It appears that it is a peaceful possession, in which no violence was involved.

5.More over, 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 objected 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.

6.It is seen that Section 171(H) is also 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. Even if we consider that the petitioner 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. Hence, Section 171(H) of I.P.C., will not attract to the facts and circumstances of the case.

7.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, Padmanabhapuram under Sections 188 and 171(H) of I.P.C., is not valid under law.

8.In the result, this Criminal Original Petition is allowed and the proceedings in S.T.C.No.693 of 2019 on the file of the learned Judicial Magistrate, Padmanabhapuram is quashed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (W)

// 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,
Padmanabhapuram,
Kanyakumari District.
- 2.The Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.M.R.SREENIVASAN, Advocate (SR-26189[F] dated
12/08/2021)

Cr1.O.P.(MD)No.7918 of 2020
11.08.2021

KS (CO)
KB(19.08.2021) 3P 5C