



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE : 02.07.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P. (MD)No.7798 of 2021
and
Crl.MP (MD)No.3967 of 2021

Santhosh ... Petitioner/Sole Accused
Vs.
1.The State,
Rep by the Inspector of Police,
Town West Police Station,
Dindigul Town,
Dindigul District.
(Crime No.659 of 2020) ... 1st Respondent/Complainant
2.Mr.Kumar
Special Sub Inspector of Police, (198)
Town West Police Station,
Dindigul Town,
Dindigul District. ... 2nd Respondent/Defacto
Complainant

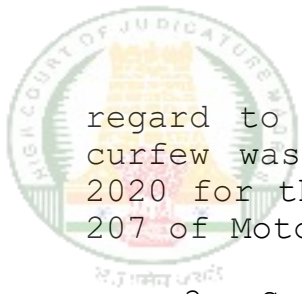
Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in connection with the impugned F.I.R in Crime No.659 of 2020 pending on the file of the Inspector of Police, Town West Police Station, Dindigul Town, Dindigul District and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.S.Sarvagam Prabhu
For R1 : Mr.R.M.Anbu Nithi,
Additional Public Prosecutor.

ORDER

This Criminal Original Petition is filed to quash the F.I.R in Crime No.659 of 2020 pending on the file of the Inspector of Police, Town West Police Station, Dindigul Town, Dindigul District.

2. The case of the prosecution is that on 05.05.2020, at about 1.30 P.m, the petitioner violated 144 curfew imposed by the government by riding the motor bike bearing Registration No.64-P-5047. Near Nehruji Nagar, Roundana, Dindigul, he was intercepted by the defacto complainant and he was directed to produce the documents



regard to the vehicle. But, he failed to produce the same, since curfew was in force, a case has been registered in Cri.No.659 of 2020 for the offences punishable under Sections 270, 188 of IPC and 207 of Motor Vehicle Act, 1988.

3. Seeking quashment of the First Information Report, this petition is filed, mainly on the ground that none of the allegations mentioned in the First Information Report, attract any of the offences against this petitioner.

4. Heard both sides.

5. The common and judicial notice has also been taken into account that due to the pandemic situation, on 24.03.2020, throughout the Tamilnadu, curfew has been imposed, under Section 144 Cr.P.C for the purpose of controlling the spread of Covid - 19 virus. At that time, this petitioner was found defying the curfew near Nehruji Nagar, Roundana, Dindigul District. No doubt that the petitioner is defying the curfew imposed by the government.

6. But, however, 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. So, Section 188 IPC cannot be made applicable, since police has no power to register the case under Section 188 IPC.

7. Next allegation is that he was roaming around the area, which leads to spread the disease. No proper reason has been given by the petitioner for riding two wheeler in the place of occurrence, but that cannot be considered that he caused spread of the disease. So, the casual outings, cannot be construed an offence under Section 270 IPC.

8. The next allegation is that the petitioner committed offence under Section 207 Motor Vehicle Act. But, this provision is not a penal provision as contended by the learned counsel for the petitioner. It is only an enabling provision, which permits the Police Officer to seize the documents from the driver or rider of the vehicle. At the time of riding, he was not in a possession of the documents with regard to his vehicle. Since it is only an enabling provision, no penal provision is attracted, in the absence of failure of production of documents in spite of notice. So, none of the offences mentioned in the First Information Report are sufficient enough to proceed the case against the petitioner.

9. Moreover, it can also be taken judicial notice that the case filed during the pandemic period is going to be dropped by the



government. So, considering this fact also, nothing is going to be served by prosecuting the case in Crime No.659 of 2020, against the petitioner.

10. Taking totality of the circumstance, the FIR in Crime No.659 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 (CSII)

// True Copy //

/ /2021

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

2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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KB(02.07.2021) 3P 3C