



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.11.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P. (MD)No.7796 of 2021
and
Crl.MP(MD)No.3962 of 2021

Sasitharan : Petitioner/Accused No.11

Vs.

1. The Inspector of Police,
Alanganallur Police Station,
Madurai.
Crime No.1127 of 2020. : Respondent/Complainant

2. Pethi @ Thirumalairaja
Sub Inspector of Police,
Alanganallur Police Station,
Madurai District,
Madurai. : Respondent/Defacto Complainant

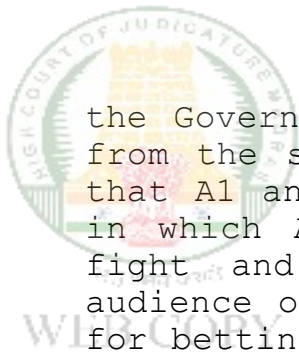
Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in connection with the impugned F.I.R in Crime No.1127 of 2020 pending on the file of the 1st Respondent and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.J.William Christopher
For Respondents : Mr.R.M.Anbu Nithi
Additional Public Prosecutor.

ORDER

This Criminal Original Petition is filed to quash the F.I.R in Crime No.1127 of 2020 pending on the file of the 1st respondent Police.

2.According to the de-facto complainant, on 21.06.2020 at about 8.30 am, he along with his police parties while on patrol in the motor cycles at the back side of Kondaiyampatti Government High School, to monitor the adherence of Cr.P.C 144 order implemented by the Government in order to control and prevent the Corona Virus deceases, found the accused persons alleged to have assembled at the spot without wearing a mask against the order promulgated by



the Government. On seeing the police, A1 and A2 managed to escape from the spot. After arrest of others, the investigation revealed that A1 and A2 said to have arranged the goat fighting for stake, in which A3, A4 and A5 were alleged to brought their goats for fight and others including the petitioner alleged to be the audience of the same and based on their statement, Rs.1,080/- used for betting, 3 goats and 4 bikes came to be seized and a case has been registered in Crime No.1127 of 2020 for the offences punishable under Sections 143, 188, 269 IPC r/w 3 of Epidemic Deceases Act, section 12 of the Tamil Nadu Gambling Act and Section 11(1)(g)(h) of Animal Cruelty Act.

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.

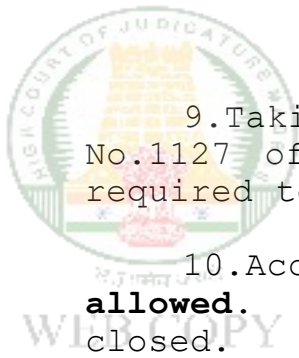
4. Heard both sides.

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. 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.

8. The allegation made in the FIR shows that this petitioner witnessed the gambling activity. There is no allegation to the effect that this petition involved in the gambling and he has also involved in cruelty to the animal. If at all, the persons, who are the prime accused can be proceeded and not the witness to the gambling activities. So the offences mentioned in the FIR are not attracted against this petitioner.



9.Taking totality of the circumstance, the FIR in Crime No.1127 of 2020, on the file of the first respondent police is required to be quashed and accordingly, the same is quashed.

10.Accordingly, this Criminal Original Petition stands **allowed**. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (RECORDS)

// 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 INSPECTOR OF POLICE,
ALANGANALLUR POLICE STATION,
MADURAI.
2. THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT, MADURAI.

Crl.O.P. (MD)No.7796 of 2021

02.11.2021

USK (14.12.2021) 3P 3C