



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.07.2021

CORAM :

THE HONOURABLE Mr. JUSTICE G.ILANGOVAN

Crl.O.P. (MD)No.8657 of 2021
and Crl.M.P(MD)No.4436 of 2021

Prakash ... Petitioner/Sole Accused

Vs.

1. The Inspector of Police,
Samayanallur Police Station,
Samayanallur,
Madurai
(Crime No.807 of 2020)

... 1st Respondent/Complainant

2. Ayyar
The Sub Inspector of Police,
Samayanallur Police Station,
Samayanallur

... 2nd Respondent/Defacto
Complainant

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the First Information Report in Crime No.807 of 2020 on the file of the first respondent police Samayanallur Police Station, Madurai District and quash the same.

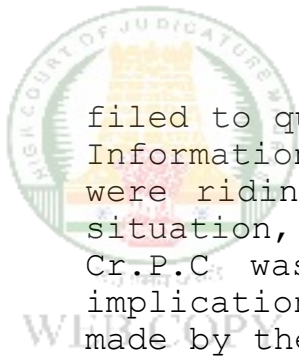
For Petitioner : Mr.B.Vinothkumar
For R1 : Mr.R.M.Anbunithi,
Additional Public Prosecutor

ORDER

This petition is filed seeking a direction to quash the First Information Report in Crime No.807 of 2020 on the file of the first respondent police Samayanallur Police Station, Madurai District.

2. The learned counsel for the petitioner submits that the petitioner applied for passport seeking job in abroad. When the matter is pending, it came to notice of this Court that because of the pendency of this case, enquiry of the Passport Officer is kept pending. It is seen that on 05.05.2021, a Clarification Notice has been issued by the Passport Authority regarding the pendency of a criminal case in Crime No. 807 of 2020.

3. The case in Crime No. 807 of 2020 has been registered for the offences under Sections 188 and 269 IPC. The present petition is



filed to quash the First Information Report. A reading of the First Information Report shows that the petitioner along with other person were riding in a Two Wheeler without wearing Mask in the pandemic situation, which was prevailing there and ban under Section 144 Cr.P.C. was also invoked. It appears that without knowing the implication of outing, such wrong exercises appeared to have been made by the petitioner along with other person without any intention to spread any disease.

4. This petition is filed mainly on the ground that Section 188 IPC is non-cognizable offence and the police has no right to register the case and investigate. Section 269 IPC is concerned, there is no intention on the part of the petitioner to spread the disease to another and simply he was riding in the Two Wheeler.

5. Heard both sides.

6. In the judgment reported in **2018(2) L.W (Crl.)606 (In Jeevanandhan and others Vs. State rep. by Inspector of Police, Velayuthampalayam Police Station, Karur District and another)** it has been held that the police has no right to file a case under Section 188 IPC and to investigate the same without getting proper permission from the concerned jurisdictional Magistrate. Here, there is no material to show that before registering the case, permission of the concerned jurisdictional Magistrate has been obtained. In such circumstances, the first respondent has no right to register the case and to investigate the matter. A detailed guideline has been issued by this Court in the judgment cited supra. On this aspect, Section 188 IPC will not stand against the petitioner.

7. The offence under Section 269 IPC is concerned, as per the contents of the First Information Report, it is seen that the petitioner was simply riding a Two Wheeler along with other person. It is a trivial matter in which no offence of grievous nature is involved. Even though Section 144 Cr.P.C order was in force, during the relevant time the respondent police ought to have warned the petitioner to go in-door, instead of that, they filed a case. It is also not the case of the first respondent that at the time of the incident, the petitioner was affected by Covid-19. So the contention that riding along the street during the pandemic period though may be wrong, considering the nature of allegations and the offences involved in this case, I am of the considered view that riding along the street in a Two Wheeler should not be a reason for spoiling the future of the petitioner. Unintended casual act should not take away the future of the petitioner. More over, it is also brought to the notice of this Court that the Government is also going to drop all these cases, which have been registered during the pandemic period against the public. Taking all these aspects into account, I am of the considered view that the First Information Report in Crime No.807 of 2020 on the file of the first respondent is liable to be quashed and the same is quashed.



8. In fine, this petition is allowed. Consequently, connected miscellaneous petition is closed.

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// True Copy //

Sd/-

Assistant Registrar (CS II)

/ /2021

Sub Assistant Registrar(CS)

CM

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

**Crl.O.P. (MD)No.8657 of 2021
and Crl.M.P (MD)No.4436 of 2021
13.07.2021**

RC (26.07.2021) 3P-3C