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CRL.O.P(MD).No.9573 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 19.07.2021

DELIVERED ON: 18.08.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

CRL.O.P (MD) .No.9573 of 2021

CRL.M.P (MD) .NO.4895 OF 2021

- 1.Palani
- 2.Kesavarajan
- 3.Manivasagan
- 4.Sekar
- 5.Kumar

... Petitioners/

Accused 1 to 5

Vs.

1. The Inspector of Police,
Srivilliputhur Town Police Station,
Virudhunagar District.
Crime No.227 of 2021.

... 1st Respondent /
Complainant

- 2.Rajaguru
S/o.Balakrishnan,
Village Administrative Officer,
North Srivilliputhur Village,
Virudhunagar District.

... 2nd Respondent /
Defact Complainant

PRAYER : Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the FIR in Crime No.227 of 2021 on the file of the 1st respondent and quash the same as against the petitioner.

For Petitioners	: Mr.C.Susi Kumar
For Respondents	: Mr.R.M.Anbunithi
	Additional Public Prosecutor

O R D E R

This Criminal Original Petition has been filed to call for the
<https://hcservices.ecourts.gov.in/hcservices/>



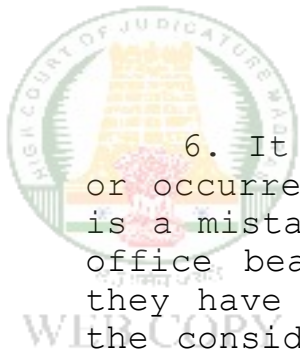
records relating to the FIR in Crime No.227 of 2021 on the file of the 1st respondent and quash the same as against the petitioners.

2. The case of the prosecution that when the second respondent was working as a Village Administrative Officer in Srivilliputhur Village, Virudhunagar District, on 27.05.2021, he received an information that the petitioners were conducting temple festival at Vinayagar and Rajeswari Ammal Temple which belongs to Vishvakarma Community people. So, he visited the place of occurrence. At that time, he found more than 100 people participating in the temple festival. The accused persons were very well informed about 144 Cr.P.C proceedings which was implemented by the Government. By violating the above said proceedings, they have conducted the temple festival. So, on the basis of the complaint given by the second respondent, a case in Crime No.227 of 2021 for the offence punishable under Sections 188 and 269 of IPC, Section 3 of Epidemic Diseases Act, 1897 has been registered.

3. Seeking quashment of the First Information Report, this petition has been filed by the petitioners mainly on the ground that they were celebrating the temple festival by following the COVID-19 Protocol issued by the Government. Apart from that, it is also contended that the Police has no power of jurisdiction to register the case for the offence punishable under Sections 188, 269 IPC, based on the judgment of this Court in the case of **Jeevanandham and others vs. State of Tamil Nadu in 2018 (2) LW (Cr) 606**.

4. Heard the learned counsel appearing for the petitioners and the learned Additional Public Prosecutor for the first respondent.

5. Reading of the First Information Report shows that on 27.05.2021 at about 23.50 p.m., temple festival was celebrated in Vinayagar and Rajeswari Ammal Temple which is situated in Srivilliputhur. The officials, on knowing about the celebration of the festival, went to the place of occurrence and they stopped the celebrations. At that time, they found more than 100 persons gathered in the area. It has been arranged by these petitioners, who were the Secretary of Vishvakarma Community people and others. So, reading of the First Information Report shows that even though the festival has been conducted by the petitioners and others by violating the prohibitory order that has been implemented by the Government due to COVID-19 Pandemic situation, it appears that on the instruction given by the officials, the celebration has been stopped. So, no damage has been done, because of celebration of the festival.



6. It is also seen from the records that no untoward incident or occurrence took place because of the celebration. No doubt, it is a mistake that has been committed by the petitioners and other office bearers in arranging and celebrating the festival. Since they have dispersed soon after the instruction, this Court is of the considered view that filing the case under Sections 188, 269 of IPC and Section 3 of Epidemic Diseases Act, 18967 may not be appropriate. Moreover, as has been held by this Court in the above mentioned case, the offence under Section 188 IPC is a non-cognizable offence for which the police has no right to register the First Information Report and file the final report, without getting proper order from the concerned Magistrate. No doubt, Section 269 IPC has also been registered. But, from the facts and circumstances of the case as mentioned earlier, it is not the case of the State that because of celebration of the festival, they were spreading COVID-19. In such cases, even 269 IPC may not be attracted. Hence, this Court is of the considered view that by following the earlier decisions, the First Information Report registered against these petitioners is liable to be quashed.

7. Accordingly, this Criminal Original Petition stands allowed and the proceedings in Crime No.227 of 2021 pending on the file of the first respondent are quashed, as far as these petitioners are concerned. Consequently connected Miscellaneous Petition is also closed.

Sd/-

Assistant Registrar (CS I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

ssb

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,
Srivilliputhur Town Police Station,
Virudhunagar District.

<https://hcservices.ecourts.gov.in/hcservices/>



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

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18.08.2021

PS (CO)
SB (27.08.2021) 4P 3C