



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.07.2021

CORAM :

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

Crl.O.P. (MD)No.9724 of 2021

and Crl.M.P(MD)No.4966 of 2021

S.Rajendran

... Petitioner/Sole Accused

Vs.

1.State rep. by
The Inspector of Police,
Anna Nagar Police Station,
Madurai District
(Crime No.762 2020)

..1st Respondent/Complainant

2.Rajkumar
The Sub Inspector of Police,
Anna Nagar Police Station,
Madurai District.

... 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 impurned First Information Report registered in Crime No.762 of 2020 Dated 30.04.2020 on the file of the first respondent police and quash the same.

For Petitioner : Mr.M.Sarangan

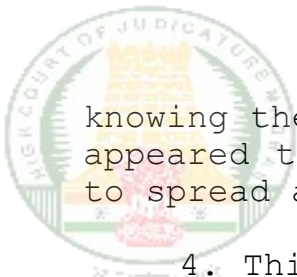
For R1 : Mr.R.M.Anbunithi,
Additional Public Prosecutor

ORDER

This petition is filed seeking a direction to quash the First Information Report in Crime No. 762 of 2020 on the file of the first respondent police.

2. The learned counsel for the petitioner submits that the petitioner sold the fruits in the fruits market in Mattuthavani Market at the pandemic period even after the respondent warned them by issuing a notice stating that during the pandemic period they should not sell the fruits in the market. Since the petitioner has sold the fruits during pandemic period, the present case has been registered in Crime No. 762 of 2020 for the offences under Sections 188 and 269 IPC. The present petition is filed to quash the First Information Report.

3.A reading of the First Information Report shows that on surveillance, the police found that the petitioner opened his fruit stall 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 opening the shop, such wrong exercise is appeared to have been made by the petitioner 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 opening his fruit shop during the pandemic period.

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 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 opening his fruit shop during the pandemic period. 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 close the shop and 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 opening the fruit shop 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 opening the fruit shop should not be a reason for roping the petitioner into a criminal case. Unintended casual act should not take away the peaceful life of the petitioner.

8. 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.762 of 2020 on the file of the first respondent is liable to be quashed and the same is quashed.



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

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /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,
Anna Nagar Police Station,
Madurai District

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

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RKN (29.07.2021) 3P 3C