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Crl.O.P(MD) No.10926 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **09.08.2021**

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGOVAN**

Crl.O.P. (MD) No.10926 of 2021

and

Crl.M.P. (MD) No.5578 of 2021

Rajan

... Petitioner/Sole Accused

Vs.

State represented by
The Sub Inspector of Police,
Pazhavor Police Station,
Tirunelveli District.
Crime No.101 of 2020

... Respondent/Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to the FIR in Crime No.101 of 2020 dated 28.04.2020 on the file of the respondent police and to quash the same.

For Petitioner	: Mr.K.Sudalaiyandi
For Respondent	: Mr.R.M.Anbunithi
	Additional Public Prosecutor
	(Crl.Side)

ORDER

This Criminal Original Petition is filed seeking a direction to quash the First Information Report in Crime No.101 of 2020 on the file of the respondent.

2.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor (Crl.Side) for the respondent.

3.The case of the petitioner is that on 28.04.2020 at about 10.00 hours, the petitioner herein was roaming in the road by using his two wheeler at the time of prohibition due to COVID-19 pandemic. Hence, a case in Crime No.101 of 2020 for the offences punishable under Sections 188 and 269 of IPC has been registered on the same day, after getting permission from the Superintendent of Police, Tirunelveli. The present petition is filed to quash the First Information Report in Crime No.101 of 2020.

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 roaming in that area.



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 respondent has no right to register the case and to investigate the matter.

7. 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. 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 roaming in the road. 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 respondent that at the time of the incident, the petitioner was affected by Covid-19. So the contention that roaming in the road during the pandemic period will spread the disease is without any basis.

8. Considering the nature of allegations and the offences involved in this case, I am of the considered view that roaming in the road without any reason should not be a reason for spoiling the future of the petitioner. Unintended casual act should not take away the future of the petitioner. Moreover, 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 in Crime No.101 of 2020 on the file of the 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 (CS-II)

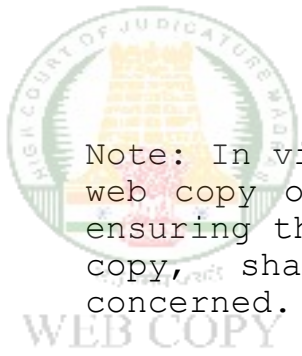
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/ /2021

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 Sub Inspector of Police,
Pazhavor Police Station,
Tirunelveli District.

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

+1 CC to M/s.K.SUDALAIYANDI, Advocate (SR-25704[F] dated 09/08/2021)

**Crl.O.P. (MD) No.10926 of 2021
09.08.2021**

RK (19.08.2021) 3P 4C