



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 17.12.2021
CORAM
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WEB COPY

Crl.O.P. (MD) Nos. 11539, 11541 & 11543 of 2021
and

Crl.M.P. (MD) Nos. 5876, 5878 & 5879 of 2021

Crl.O.P. (MD) No. 11539 of 2021:

1.Kathiresan

2.Senthilkumar

... Petitioners/
Accused No.1 to 2

Vs.

1.The State represented by
The Inspector of Police,
Puthiamputhur Police Station,
Thoothukudi District.
(Crime No.109 of 2021)

... 1st respondent/
Complainant

2.Patchai perumal,
Head Constable,
Puthiamputhur Police Station,
Thoothukudi District.

... 2nd respondent/
Defacto Complainant

Prayer : Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in Crime No.109 of 2021 pending investigation on the file of the first respondent police and quash the same.

For Petitioner : Mr.P.S.Raman, Senior Counsel
for Mr.V.P.Raman,

For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor for R.1

Crl.O.P. (MD) No.11541 of 2021:

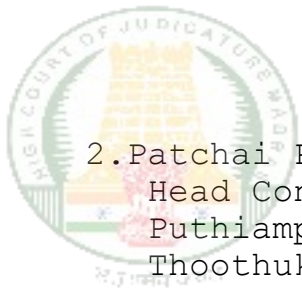
Kanisiyash @ R.Canisius

... Petitioner/
Accused No.3

Vs.

1.The State represented by
The Inspector of Police,
Puthiamputhur Police Station,
Thoothukudi District.
(Crime No.109 of 2021)

... 1st Respondent/
Complainant



2.Patchai Perumal,
Head Constable,
Puthiamputhur Police Station,
Thoothukudi District.

... 2nd Respondent/
Defacto Complainant

WEB COPY

Prayer : Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in Crime No.109 of 2021 pending investigation on the file of the first respondent police and quash the same.

For Petitioner : Mr.I.Subramaniam, Senior Counsel
for Mr.V.Meenakshisundaram

For Respondents : Mr.E.Antony Sahaya Prabahar
Additional public Prosecutor for R.1

Crl.O.P. (MD)No. 11543 of 2021:

A.Sumathi ... Petitioner/Accused No.4

Vs.

1.The State represented by
The Inspector of Police,
Puthiamputhur Police Station,
Thoothukudi District.
(Crime No.109 of 2021) ... 1st Respondent/Complainant

2.Patchai Perumal,
Head Constable,
Puthiamputhur Police Station,
Thoothukudi District. ... 2nd Respondent/
Defacto Complainant

Prayer : Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records in Crime No.109 of 2021 pending investigation on the file of the first respondent police and quash the same.

For Petitioner : Mr.I.Subramaniam, Senior Counsel
for Mr.K.P.Anatha Krishna

For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor for R.1



COMMON ORDER

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

2. These Criminal Original Petitions have been filed for quashing the FIR in Crime No.109 of 2021 registered on the file of Puthiamputhur Police Station, Thoothukudi District for the offences under Sections 269, 270, 271 read with Section 109 IPC and Section 3 of Epidemic Diseases Act, 1897.

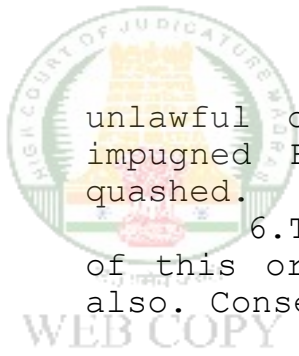
3. The case of the prosecution is that the petitioner along with others unlawfully assembled in violation of the lock down restrictions imposed by the Government to prevent the spread of Covid disease. The petitioner and others had shouted slogans demanding production of Oxygen at Sterlite factory. The members of the group did not wear masks properly and did not adhere to the social distancing norms. To quash the said First Information Report, this criminal original petition has been filed.

4. As rightly pointed out by the learned counsel appearing for the petitioner, Sections 269 and 270 of IPC can be invoked only if the act is likely to spread the infection. The petitioner There is nothing on record to show that any of the accused were infected with Covid-19 disease. It is not the case of the prosecution that as a result of the petitioner's act, the disease spread and they caused no injury to anyone.

5. Section 3 of the Epidemic Diseases Act has been invoked against the petitioner herein. The said provision is as follows:-

"Penalty - Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under Section 188 of the Indian Penal Code (45 of 1860). "

As rightly pointed out by the learned counsel appearing for the petitioner, a learned Judge of this Court in the decision reported in **2018 2 Law Weekly (Crl.) 606 (Jeevanandham V. State)** held that the police cannot register a First Information Report straightaway for the offence under Section 188 of IPC. Applying the very same logic, a First Information Report cannot be straightaway registered for the offence under Section 3 of the Epidemic Diseases Act also. The procedure applicable to a non-cognizable offence should have been followed and since the said procedure was not adopted in this case, the First Information Report is vulnerable on that account. Since the supply of Oxygen was an imperative necessity, all that the petitioner demanded was that Oxygen must be produced at Sterlite factory. By no stretch of imagination that cannot be called as an



unlawful object. Looked at from any angle, registration of the impugned First Information Report was not warranted. It stands quashed.

6. These criminal original petitions are allowed. The benefit of this order will enure in favour of the non-petitioning accused also. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS II)

// True Copy //

/07/2022

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,
Puthiamputhur Police Station,
Thoothukudi District.
2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

**Cr1.O.P. (MD) Nos. 11539, 11541 &
11543 of 2021
17.12.2021**

MGJ(04.07.2022) 4P 3C