



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.12.2021

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)No.11547 of 2021 and

CRL.M.P. (MD)No.5881 of 2021

Balamurugan @ Suresh

... Petitioner / Accused No.1

Vs.

1. State rep. By,
The Inspector of Police,
SIPCOT police station,
Thoothukudi District.
(Crime No.299 of 2021)

... 1st Respondent / Complainant

2. Henson Paulraj

... 2nd Respondent /
Defacto Complainant

Prayer: Criminal Original petition is filed under Section 482 of Cr.P.C, to call for the records in Crime No.299 of 2021 pending investigation on the file of the first respondent police and quash the same against the petitioner.

For Petitioner : Mr.V.P.Raman

For R-1 : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor.

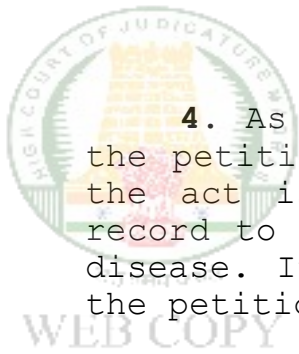
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O R D E R

The petitioner has been named as the first accused in Crime No.299 of 2021 registered on the file of SIPCOT police station, Tuticorin District, for the offences under Sections 143, 269, 270 and 109 of IPC and Section 3 of the Epidemic Diseases Act.

2. The case of the prosecution is that the petitioner along with others unlawfully assembled in violation of the lockdown 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.

3. 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. 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.

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 a 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. This criminal original petition is allowed. The benefit of this order will enure in favour of the non-petitioning accused also. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (As)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

PMU

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,
SIPCOT police station,
Thoothukudi District.

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

+1 CC to M/s.V.P.RAMAN, Advocate (SR-39636[F] dated 20/12/2021)

CrI.O.P. (MD) No.11547 of 2021
17.12.2021

_RD(16.05.2022) 3P 4C