



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.04.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P. (MD)No. 11731 of 2020

and

Crl.MP (MD)No.5362 of 2020

WEB COPY

1.Ahamed Idhrish @ Ahamed Itries
2.Sahul Hameed
3.Syed Ibrahim
4.Abdul Lathif

... Petitioners/Accused Nos.1,2,18 & 51
Vs.

1.The State represented by
The Inspector of Police,
Vilakuthoon Police Station,
Madurai City.

(Crime No.937/2019)

... 1st Respondents/Complainant

2.Logeswari

... 2nd Respondent/Defacto
Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records pertaining to the First Information Report in Crime No.937 of 2019 on the file of the 1st Respondent and quash the same as illegal so far as the petitioners are concerned.

For Petitioner : Mr.K.Navaneetharaja
For R1 : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl.Side)

ORDER

This Criminal Original Petition has been filed to quash the First Information Report in Crime No.937 of 2019 on the file of the first respondent police.

2. According to the learned counsel for the petitioners, the first respondent registered a case in Crime No.937 of 2019 against the petitioners and others stating that without getting any permission, the petitioners along with 114 members assembled near Anna Statue at Keelaveli Veethi, Madurai District and protested against the verdict given by the Hon'ble Supreme Court in 'Babar Masjid Case' and restrained the public movement and caused public nuisance. Due to the social welfare activities, the petitioners earned enmity of the respondent police. So, a case in Crime No.937 of 2019 was filed by the second respondent, who is the Inspector of Police attached to the first respondent police with *malafide* intention. Against which, the petitioners have filed the present petition seeking to quash the case registered against them.

3.The learned Government Advocate (Criminal side) for the respondent police would submit that the facts of the case are



exactly similar to the case covered in the decision reported in **2018 2 LW (crl) 606 [Jeevanandham and other Vs. Inspector of Police, Sivakasi Town Police Station, Virudhunagar District]**, dated **20.09.2018**.

4. Heard the learned counsel on either side.

5. The main allegation that has been levelled against the petitioners is that defying the ban order imposed by the Government, without permission the petitioners were conducting protest. An offence under Section 188 of IPC is a non-cognizable offence which cannot be investigated by the first respondent police without proper permission from the concerned Court. According to the petitioners, the facts and circumstances of the case is squarely covered in the judgment of this Court reported in **2018 2 LW (crl) 606** in the case of **Jeevanandham and other Vs. Inspector of Police, Sivakasi Town Police Station, Virudhunagar District and other**, wherein paragraph No.25 certain guidelines issued by this Court, which are reproduced herein for ready reference:-

a) A Police Officer cannot register an FIR for any of the offences falling under Section 172 to 188 of IPC.

b) A Police Officer by virtue of the powers conferred under Section 41 of Cr.P.C will have the authority to take action under Section 41 of Cr.P.C., when a cognizable offence under Section 188 IPC is committed in his presence or where such action is required, to prevent such person from committing an offence under Section 188 of IPC.

c) The role of the Police Officer will be confined only to the preventive action as stipulated under Section 41 of Cr.P.C and immediately thereafter, he has to inform about the same to the public servant concerned/authorised, to enable such public servant to give a complaint in writing before the jurisdictional Magistrate, who shall take cognizance of such complaint on being prima facie satisfied with the requirements of Section 188 of IPC.

d) In order to attract the provisions of Section 188 of IPC, the written complaint of the public servant concerned should reflect the following ingredients namely;

i) that there must be an order promulgated by the public servant;

ii) that such public servant is lawfully empowered to promulgate it;

iii) that the person with knowledge of such order and being directed by such order to abstain from doing certain act or to take certain order with certain property in his possession and under his management, has disobeyed; and

iv) that such disobedience causes or tends to

cause;



- (a) obstruction, annoyance or risk of it to any person lawfully employed; or
(b) danger to human life, health or safety; or
(c) a riot or affray.

e) The promulgation issued under Section 30(2) of the Police Act, 1861, must satisfy the test of reasonableness and can only be in the nature of a regulatory power and not a blanket power to trifle any democratic dissent of the citizens by the Police.

f) The promulgation through which, the order is made known must be by something done openly and in public and private information will not be a promulgation. The order must be notified or published by beat of drum or in a Gazette or published in a newspaper with a wide circulation.

g) No Judicial Magistrate should take cognizance of a Final Report when it reflects an offence under Section 172 to 188 of IPC. An FIR or a Final Report will not become void ab initio insofar as offences other than Section 172 to 188 of IPC and a Final Report can be taken cognizance by the Magistrate insofar as offences not covered under Section 195(1)(a)(i) of Cr.P.C.

h) The Director General of Police, Chennai and Inspector General of the various Zones are directed to immediately formulate a process by specifically empowering public servants dealing with for an offence under Section 188 of IPC to ensure that there is no delay in filing a written complaint by the public servants concerned under Section 195(1)(a)(i) of Cr.P.C.

6. It is seen that the guidelines that has been prescribed in the above said judgment was not followed by the respondent police, while registering a case.

7. Considering the facts and circumstances of the case, the entire proceedings in Crime No.937 of 2019 on the file of the first respondent police stands quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

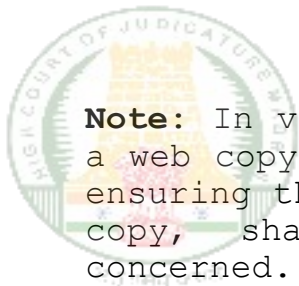
Sd/-

Assistant Registrar

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



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.

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To

1. The Inspector of Police,
Vilakuthoon Police Station,
Madurai City.

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

+2 CC to M/s.A.Mohamed Yusuf, Advocate (SR-18203[F] dated 30/04/2021)

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