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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.09.2021

CORAM :

THE HONOURABLE **Mr. JUSTICE G.ILANGOVA**

Crl.O.P.(MD)No.13457 of 2021
and Crl.M.P(MD)No.6988 of 2021

Praveen

... Petitioner/Sole Accused

Vs.

1. The State Rep. by,
The Inspector of Police,
Appanthirupathy Police Station,
Madurai District.
(Crime No.1164 of 2020)

... 1st Respondent/Complainant

2. M.Veluchamy,
The Sub-Inspector of Police,
Appanthirupathy Police Station,
Madurai District.

... 2nd Respondent/De-facto
Complainant

Prayer : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the entire records pertaining to the F.I.R. in Crime No.1164 of 2020 pending on the file of the Inspector of Police, Appanthirupathy Police Station, Madurai District and quash the same.

For Petitioner : Mr.P.Saravanan

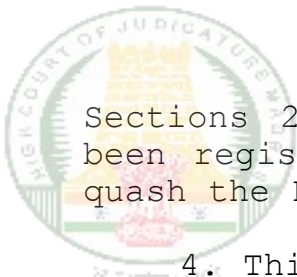
For R1 : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)

ORDER

This petition is filed seeking a direction to quash the First Information Report in Crime No.1164 of 2020 pending on the file of the Inspector of Police, Appanthirupathy Police Station, Madurai District.

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

3. The case of the petitioner is that when Section 144 Cr.P.C ban was in force the petitioner was found walking without wearing mask on 02.09.2020, without obeying the ban order. Hence, a case in Crime No.1164 of 2020 for the offences under Section 188 IPC and



Sections 25(2)(a) and 26(2) of Disaster Management Act, 2005 has been registered on the same day. The present petition is filed to quash the First Information Report in Crime No.1164 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. Sections 25(2)(a) and 26(2) of Disaster Management Act, 2005 are concerned, the respondent police, without even applying mind, has registered the case under those Sections.

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 Sections 25(2)(a) and 26(2) of Disaster Management Act, 2005 are concerned, as per the contents of the First Information Report, it is seen that the petitioner was simply walking in the public place and those offences are not attracted. 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 walking along the street 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 walking along the street 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. 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 in Crime No.1164 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 (T&P)

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

Crl.O.P. (MD)No.13457 of 2021
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RK (28.09.2021) 3P 3C