



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **28.09.2021**

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGOVA**

Crl.O.P. (MD) No.13801 of 2021

and

Crl.M.P. (MD) No.7175 of 2021

K.Irulandi

... Petitioner/Accused No.16

Vs.

The Special Sub Inspector of Police,
Keela Paralachi Police Station,
Virudhunagar District.
(Crime No. 37/2017)

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the FIR in crime No.37 of 2017 on the file of the Respondent police, Virudhunagar District and quash the same against the petitioner.

For Petitioner	: Ms.K.Vinothini
For Respondent	: Mr.K.Sanjay Gandhi
	Government Advocate(Crl side)

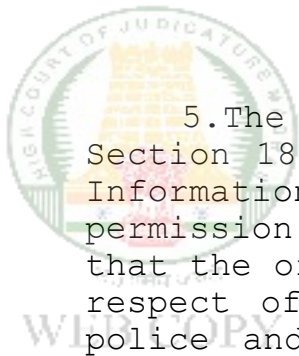
ORDER

This Criminal Original Petition is filed seeking quashment of First Information Report in Crime No.37 of 2017 on the file of the respondent police.

2.Heard the learned counsel for the petitioner and the learned Government Advocate(Crl side) for the respondent.

3.The case of the prosecution is that on 25.04.2017, one Kalaiselvan along with 24 others have illegally assembled and participated in a "Mariyal Porattam" and raised slogans against the Government and demanding waiver of Agricultural loan, without getting prior permission. Hence, a case in Crime No.37 of 2017 for the offences punishable under Sections 341, 143 and 188 of IPC has been registered. The petitioner herein is arrayed as accused No.16. The present petition is filed to quash the First Information Report in Crime No.37 of 2017.

4.A reading of the FIR shows that the petitioner along with other persons have been assembled and participated in a "Mariyal Porattam" and raised slogans against the Government and demanding waiver of Agricultural loan,near the place of occurrence. So, on the basis of the complaint given by the respondent, a case has been registered for the offences punishable under Sections 341, 143 and 188 of IPC in Crime No.37 of 2017.



5.The fact remains that for the offences punishable under Section 188 IPC, the police officer has no power to register First Information Report and investigate the matter without proper permission from the concerned Jurisdictional Magistrate. It is seen that the offence under Section 188 IPC is non cognizable offence, in respect of which, First Information Report has been filed by the police and this position has been settled by this Court in the judgment reported in **2018 2 LW (crl) 606 Jeevanandham and other Vs. Inspector of Police, Sivakasi Town Police Station, Virudhunagar District]**, dated 20.09.2018, wherein it was held that no such power is available to the police officers and series of directions have been issued to deal with such cases. On this ground, First Information Report registered under Section 188 IPC is liable to be quashed.

6.Insofar as Sections 341 and 143 of IPC is concerned, it must be shown that there is unlawful assembly as defined under Section 141 of IPC. Section 141 of IPC reads as follows:-

"141. Unlawful assembly:- An assembly of five or more persons is designated an **"unlawful assembly"**, if the common object of the persons composing that assembly is

First:- To overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

Second:- To resist the execution of any law, or of any legal process; or

Third:- To commit any mischief or criminal trespass, or other offence; or

Fourth:- By means of criminal force, or show of criminal force, to any person, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

Fifth:- By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do."



7.A reading of the FIR shows that the case has been registered under Sections 341 and 143 IPC also. But none of the ingredients as defined under Section 141 of IPC will attract against the petitioner and others. It is not an unlawful assembly and the demand is also not unlawful in nature. In a democratic country, the freedom of expression is well recognised. A reading of the FIR shows that road block did not turn violent. So, that cannot be considered as unlawful assembly.

8.In view of the above, I am of the considered view that the First Information Report in Crime No.37 of 2017 on the file of the respondent police is required to be quashed and accordingly, the same is quashed and the Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /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 Special Sub Inspector of Police,
Keela Paralachi Police Station,
Virudhunagar District.

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

Cr1.O.P. (MD) No.13801 of 2021
28.09.2021

SRR (CO) /RS (18.10.2021) 3P 3C