



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.10.2021

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VAN

Crl.O.P. (MD) No. 13878 of 2021

WEB COPY

Mohammed Harish

... Petitioner/Sole Accused

Vs.

1.The State of Tamil Nadu,
Rep by the Inspector of Police,
Melur Police Station,
Madurai District.
In Crime No.315 of 2020

... 1st Respondent/Complainant

2.C.Balamurugan

... 2nd Respondent/Defacto
Complainant

Prayer: Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records relating to the impugned FIR in Crime No.315 of 2020 on the file of the first respondent and quash the same as illegal.

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

ORDER

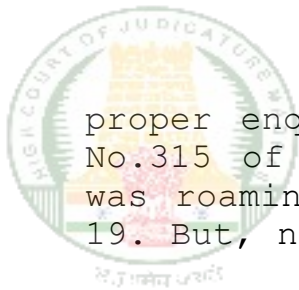
This Criminal Original Petition has been filed to quash the FIR in Crime No.315 of 2020 on the file of the first respondent.

2. The case of the prosecution is that on 10.04.2020, the petitioner violated 144 curfew imposed by the government by roaming near Alagarkovil-Melur Road, Madurai District, without proper reason. Since curfew was in force, a case has been registered in Cri.No.315 of 2020 for the offence punishable under Sections 188 & 269 of IPC.

3. Seeking quashment of the First Information Report, this petition is filed, mainly on the ground that none of the allegations mentioned in the First Information Report, attract any of the offences against this petitioner.

4. Heard both sides.

5. According to the learned counsel for the petitioner, on 10.04.2020, he went out of the house only for the purpose of purchasing medical supplies from the nearby pharmacy. Except that, he did not go to him for roaming around the place. But, without



proper enquiry, the respondent police registered a case in Crime No.315 of 2020 as if without wearing face masks, the petitioner was roaming in the road at the time of prohibition due to Covid-19. But, no prima facie case has been made out in the FIR.

6. The common and judicial notice has also been taken into account that due to the pandemic situation, on 20.04.2020, throughout the Tamilnadu, curfew has been imposed, under Section 144 Cr.P.C for the purpose of controlling the spread of Covid - 19 virus. At that time, this petitioner was found defying the curfew near Alagarkovil-Melur Road, Madurai District. No doubt that the petitioner is defying the curfew imposed by the government.

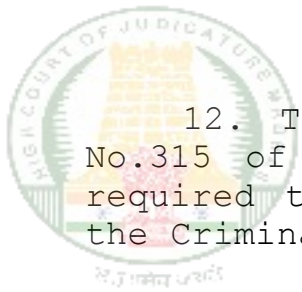
7. But, however, it is seen that the offence under Section 188 IPC is non cognizable offence. In respect of which, First Information Report has been filed by the police and this position has been settled by this Court in the judgment reported in **2018 2 LW (crl) 606 Jeevanandham and other Vs. Inspector of Police, Sivakasi Town Police Station, Virudhunagar District], dated 20.09.2018**. So, Section 188 IPC cannot be made applicable, since police has no power to register the case under Section 188 IPC.

8. Next allegation is that he was roaming around the area, which leads to spread the disease. But that cannot be considered that he caused spread of the disease. So, the casual outings, cannot be construed an offence under Section 269 IPC.

9. Moreover, it is seen that he is only aged about 19 years at the time of occurrence. So, probably it can be taken only casual outing. So, the casual outing, cannot be construed as offence. It is a trivial offence. By which, no damage was done. The Police Officer would have warned him to go home. Without doing this, he registered a case against him.

10. It is further seen that the petitioner has applied for passport and verification has also been made and during the course of verification, it was found that the petitioner was involved in this offence. So, as mentioned earlier, it is trivial offence and it is not affected the future career of the petitioner. It is seen that for the purpose of purchasing medicines, he has gone to the medical shop. So, absolutely, there is no intention, on the part of the petitioner to roam around that area, without any purpose.

11. Moreover, it can also be taken judicial notice that the case filed during the pandemic period against public is going to be dropped by the government. So, considering this fact also, nothing is going to be served by prosecuting the case in Crime No.315 of 2020, against the petitioner.



12. Taking totality of the circumstance, the FIR in Crime No.315 of 2020, on the file of the first respondent police is required to be quashed and accordingly, the same is quashed and the Criminal Original Petition is allowed.

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Sd/-

Assistant Registrar (RECORDS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

dss

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,
Melur Police Station,
Madurai District.

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

CrI.O.P. (MD)No. 13878 of 2021
07.10.2021

AM(CO)

SB(07.12.2021) 3P 3C