



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **29.09.2021**

CORAM:

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

**Crl.O.P. (MD) No.14608 of 2021**

**and**

**Crl.M.P. (MD) No.7717 of 2021**

Surya Teja.G @ Suryadeva

... Petitioner/Sole Accused

Vs.

1.The State Rep by  
The Inspector of Police,  
Melur Police Station,  
Madurai District.  
In Cr.No. 1568 of 2020

... Respondent/Complainant

2. A.Jeyakumar,  
Special Sub Inspector of Police,  
Melur Police Station,  
Madurai District.

... 2nd Respondent/Defacto  
Complainant

**PRAYER:** Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records pertaining to the Crime No.1568 of 2020 for the alleged offence under Section 188 of Indian Penal Code and Sections 25 (2) & 26 (2) of Disaster Management Act, 2005 pending on the file of the 1<sup>st</sup> respondent Police and quash the same.

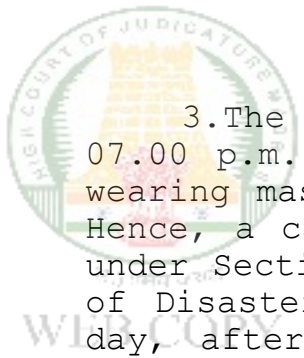
For Petitioner : Mr.R.Aravind Raj

For Respondents : Mr.R.M.S.Sethuraman  
Additional Public Prosecutor

**ORDER**

This Criminal Original Petition is filed seeking a direction to quash the First Information Report in Crime No.1568 of 2020 for the alleged offence under Section 188 of Indian Penal Code and Sections 25 (2) & 26 (2) of Disaster Management Act, 2005, pending on the file of the 1<sup>st</sup> respondent Police.

2.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor (Crl.Side) for the respondents.



3.The case of the petitioner is that on 08.08.2020, at about 07.00 p.m., the petitioner herein was roaming in the road without wearing mask, at the time of prohibition due to COVID-19 pandemic. Hence, a case in Crime No.1568 of 2020, for the offence punishable under Section 188 of Indian Penal Code and Sections 25 (2) & 26 (2) of Disaster Management Act, 2005, has been registered on the same day, after getting permission from the Superintendent of Police, Madurai. The present petition is filed to quash the First Information Report in Crime No.1568 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) & 26 (2) of Disaster Management Act, 2005, is also not attracted.

5.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.

6. 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. As per the contents of the First Information Report, it is seen that the petitioner was simply roaming in the road without wearing mask. 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 respondents that at the time of the incident, the petitioner was affected by COVID-19. So the contention that roaming in the road during the pandemic period will spread the disease is without any basis.

7. Considering the nature of allegations and the offences involved in this case, I am of the considered view that roaming in the road 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. Moreover, 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.1568 of 2020 on the file of the respondent police is liable to be quashed and the same is quashed.



8. In fine, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-I)

WEB COPY

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Ls

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.  
In Cr.No. 1568 of 2020
2. A.Jeyakumar,  
Special Sub Inspector of Police,  
Melur Police Station,  
Madurai District.
- 3.The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

**Cr1.O.P. (MD) No.14608 of 2021**  
**29.09.2021**

RK (07.10.2021) 3P 4C