



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **04.10.2021**

CORAM:

THE HONOURABLE MR.JUSTICE **G.ILANGOVAN**

Crl.O.P. (MD) No.14891 of 2021

and

Crl.M.P. (MD) No.7923 of 2021

1.Abdul Ajiss

2.Mullan @ Syed Ali

... Petitioners/Accused No 1& 2

Vs.

State through by

1.The Inspector of Police,
Melapalayam Police Station,
In Crime No.340/2021,
Tirunelveli District.

...1st Respondent/Complainant

2.Fathima Parveen

...2nd Respondents/Defacto
Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the FIR in Crime No.340/2021 on the file of the 1st respondent quash the same as against the petitioners are concerned.

For Petitioners

:Mr.C.Susi Kumar

For R1

:Mr.RMS.Sethuraman

Additional Public Prosecutor

ORDER

This petition is filed seeking quashment of Crime No.340 of 2021 on the file of the 1st respondent.

2.Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor for the 1st respondent.

3.The case of the petitioners is that on 15.08.2021, they were said to have conducted a meeting to discuss the issue regarding the demand for releasing the accused persons, who were arrested in the Rajiv Gandhi murder case and also other people, at the time of prohibition due to COVID-19 pandemic. Hence, a case in Crime No.340 of 2021 for the offences punishable under Sections 143, 188 and 269 of IPC and Section 3 of Epidemic Diseases Act, 1897 has been registered against them. The present petition is filed to quash the



First Information Report in Crime No.340 of 2021.

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. Section 269 IPC is concerned, there is no intention on the part of the petitioners to spread the disease to another and simply they were discussed about the issue regarding the demand for releasing such persons.

5.In the judgment reported in **2018(2) L.W (CrI.) 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. 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 petitioners.

6.The offence under Section 269 IPC is concerned, as per the contents of the First Information Report, it is seen that the petitioners were simply discussed about the issue regarding the demand for releasing such persons. 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 petitioners, instead of that, they filed a case. It is also not the case of the 1st respondent that at the time of the incident, the petitioners were affected by COVID-19. So, the contention that arranging the meeting during the pandemic period would have 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 arranging the meeting without any safety measure should not be a reason for spoiling the future of the petitioners. Unintended casual act should not take away the future of the petitioners. 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.340 of 2021 on the file of the 1st respondent is liable to be quashed and the same is quashed.



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

Sd/-

Assistant Registrar (AE)

WEB COPY

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

mm

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

Crl.O.P. (MD)No.14891 of 2021
04.10.2021

NSN (CO)
KB (25.10.2021) 3P 3C