



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **21.10.2021**

CORAM:

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

Crl.O.P. (MD) No.15743 of 2021

and

Crl.M.P. (MD) No.8502 of 2021

K.Ravichandran

... Petitioner/Sole Accused

Vs.

1.The State Rep. by
The Sub Inspector of Police,
Kundrakudi Police Station,
Sivagangai District.
(In Crime No.142 of 2020)

... 1st Respondent/Complainant

2.A.V.Surendran

... 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 FIR in Crime No.142 of 2020 on the file of the 1st respondent and quash the same as illegal.

For Petitioner	: Mr.C.Maylvahana Rajendran
For R1	: Mr.RMS.Sethuraman
	Additional Public Prosecutor

ORDER

This petition is filed seeking quashment of Crime No.142 of 2020 on the file of the 1st respondent.

2.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor (Crl.Side) for the 1st respondent.

3.The case of the petitioner is that the 2nd respondent has lodged a complaint before the 1st respondent herein stating that the petitioner said to have constructed a Septic Tank, which affects the ground water of the neighbor, namely, Thomai Ammal. Based upon the complaint given by the aforesaid Thomai Ammal, action was initiated under Section 133 of Cr.P.C. by the 2nd respondent, whereby, the petitioner was directed to remove the Septic Tank. But, he did not remove the same. Hence, a case in Crime No.142 of 2020 for the offences punishable under Section 188 of IPC has been registered. The present petition is filed to quash the First Information Report in Crime No.142 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.

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 1st 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 petitioner.

7.Considering the nature of allegation and the offence involved in this case, I am of the considered view that the First Information Report in Crime No.142 of 2020 on the file of the 1st respondent is liable to be quashed and accordingly, the same is quashed.

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

Sd/-

Assistant Registrar (A.D I)

// 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 Sub Inspector of Police,
Kundrakudi Police Station,
Sivagangai District.

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

+1 CC to M/s.C.MAYILVAHANA RAJENDRAN, Advocate (SR-32324[F] dated 22/10/2021)

Crl.O.P. (MD) No.15743 of 2021

21.10.2021

KMV(CO)/RS/UV (02.11.2021) 2P 4C

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