



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.10.2021

CORAM:

THE HONOURABLE MR. JUSTICE G.ILANGOVAN

Crl.O.P (MD) No.16482 of 2021
and Crl.M.P(MD) No.8887 of 2021

Kumaresan

... Petitioner

-Vs-

The State represented by its,
The Inspector of Police,
Paramakudi Town Police Station,
Ramanathapuram District.
(Crime No.526 of 2020)

... Respondent/Complainant

PRAYER: The Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records of the FIR in Crime No.526 of 2020 on the file of the respondent and quash the same.

For Petitioner : Mr.M.S.Jeyakarthik

For Respondent : Mr.RMS.Sethuraman
Additional Public Prosecutor

ORDER

This petition is filed seeking quashment of Crime No.526 of 2020 on the file of the respondent.

2.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the respondent.

3.The case of the petitioner is that on 11.09.2020 at about 11.50 a.m., the petitioner along with 44 persons gathered and participated in the Martyr Immanuel Sekaran Memorial day function without following the guidelines issued by the Government of Tamil Nadu with regard to the implementation of 144 proceedings due to COVID-19 pandemic. Hence, a case in Crime No.526 of 2020 for the offences punishable under Sections 143, 177, 188 and 269 of IPC has been registered. The present petition is filed to quash the First Information Report in Crime No.526 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. Section 269 IPC is concerned, there is no intention on the part of the petitioner to spread the



disease to another and simply he was roaming in the road.

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. 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.

6. The offence under Section 269 IPC is concerned, as per the contents of the First Information Report, it is seen that the petitioner was simply roaming in the road. Apart from Sections 188 and 269 IPC, the offences 143 is also alleged against this petitioner. It is the allegation of the prosecution is that along with others this petitioner by defending the 144 Cr.P.C. proceedings gathered in the place. So according to the prosecution, it is an offence under Section 143 of IPC.

7. Section 141 of IPC is 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.

Explanation – An assembly which was not unlawful



when it assembled, may subsequently become an unlawful assembly."

8. When we see the facts of the case in the light of the above said definition, it is seen that the ingredients of the offences under Sections 141 IPC are not attracted against this petitioner and others with regard to the allegations levelled against them that they were gathered in the place of occurrence not for committing any offence which constitute an unlawful assembly. They have simply gathered in that place for participating in Martyr Immanuel Sekaran Memorial day function. For the purpose of conducting the function, the petitioner and others ought to have obtained proper and prior permission from the authorities. But they have not done so. But that will not amount to unlawful assembly as defined under Section 141 I.P.C. It appears that they exercised their democratic right in celebrating their leader's memorial day function. So this will not amount to an offence.

9. It is also seen that even though the Covid -19 protocol was in force during the relevant time, no material has been collected to show that the petitioner and others were infected by Covid - 19 viral disease. So their intention was not to spread the disease, but to celebrate their leader's memorial day function.

10. Taking all these aspects into account, I am of the considered view that the First Information Report in Crime No.526 of 2020 on the file of the respondent is liable to be quashed and accordingly, the same is quashed.

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

Sd/-

Assistant Registrar(AE)

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/ /2021

Sub Assistant Registrar(CS)

TM

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,
Paramakudi Town Police Station,
Ramanathapuram District.

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

+1 CC to M/s.M.S.JEYAKARTHIK, Advocate (SR-32890[F] dated
27/10/2021)

CRL OP (MD) No.16482 of 2021

27.10.2021

PK(CO)

TR(29.11.2021) 4P 4C