



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.11.2021

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CrI.O.P (MD)No.16135 of 2021

and

CrI.M.P (MD)No.8670 of 2021

WEB COPY

1.Selvam
2.Marimuthu @ Ramar
3.Jayaram

... Petitioners/Accused Nos.1 to 3

Vs.

1.State Rep. by its
The Sub Inspector of Police,
Kadayam Police Station,
Tirunelveli District.
(Crime No.105 of 2020)

...1st Respondent/Complainant

2.Sarasaian

...2nd Respondent/Defacto Complainant

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating to the proceedings of First Information Report in Crime No.105 of 2020 on the file of the 1st respondent police and quash the same as against the petitioners herein.

For Petitioners : Mr.K.P.Narayana Kumar
For R1 : Mr.T.Senthil Kumar,
Additional Public Prosecutor.

O R D E R

Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor for the first respondent.

2.This Criminal Original Petition has been filed to quash the FIR in Crime No.105 of 2020 registered on the file of the first respondent for the offence under Section 291 of I.P.C.

3.The case of the prosecution is that the petitioners were found uttering filthy words in a public place and that when the police patrol directed them to disperse, they defied the the directive and continued to commit public nuisance. Hence, based on the information lodged by the jurisdictional Sub Inspector of Police, the impugned FIR was registered.

4.Section 290 of IPC is a non-cognizable offence. As per Section 155(2) of Cr.Pc, no police officer shall investigate a non-cognizable case without the order of a Magistrate having power to try such case or commit the case for trial. The informant in a non-cognizable case has to be referred to the Magistrate. On the other



hand, Section 291 of IPC is a cognizable offence and an FIR can be registered without an order from the jurisdictional Magistrate.

5.The question that arises for consideration is whether the acts attributed to the petitioners can be said to attract the offence under Section 291 of IPC. One of the very few cases on the subject is the one reported in ILR (1886) 8 ALL 99 (Queen- Empress vs. Jokhu). It was held by His Lordship Mr.Justice Oldfield that to support a conviction under Section 291 of the Penal Code, there must be proof of an injunction to the accused individually against repeating or continuing the same particular public nuisance. It must be shown that the person convicted had on some previous occasion committed the particular nuisance, had been enjoined not to repeat or continue it, and had repeated or continued it. The authority under which a Magistrate can order or enjoin a person against repeating or continuing a public nuisance is Section 143 of the Criminal Procedure Code; and it is the infringement of this order or injunction that is punishable under Section 291 of the Indian Penal Code; and it is clear that what is contemplated is an order addressed to a particular person (see Schedule V, Form 20). Of course, Justice Oldfield was referring to what is now the old 1898 Code.

6.Section 143 of the old Code was as follows :

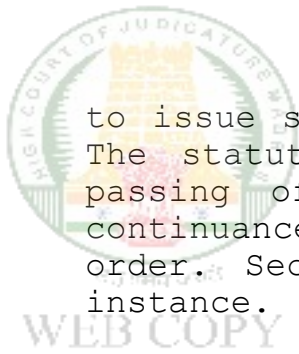
"A District Magistrate or Sub-divisional Magistrate, or any other Magistrate empowered by the Local Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code (XIV of 1860) or any special or local law."

When it was suggested that a penalty should be prescribed for disobedience of an order under Section 143, the Law Commission of India in its 37th Report (1968) felt that the provisions of Section 291 of IPC are enough. Interestingly, Section 143 of the new Code is also almost identically worded. It is therefore safe to conclude that Section 291 can be invoked only for breach of the order passed under Section 143 of Cr.PC.

7.Section 291 of IPC is as follows :

"Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both."

Chapter X (B) of Cr.Pc contains provisions relating to public nuisances. The Executive Magistrate has been conferred with power and jurisdiction to deal with them. Section 291 of IPC employs the



to issue such injunction not to repeat or continue such nuisance". The statutory scheme contemplates commission of public nuisance, passing of an injunction order restraining its commission and continuance or repetition of the act in defiance of the injunction order. Section 291 of IPC cannot be invoked in the very first instance.

8.A formal proceeding from the competent authority must have been issued between the first commission of the act of public nuisance and its repetition. In the case on hand, there has been no such issuance of formal proceeding against the petitioners. The statement by the informant police that the accused did not pay heed to their instruction will not constitute an offence under Section 291 of IPC. The act of committing public nuisance by itself is a non-cognizable offence. For it to become a cognizable offence, a further element is required and that is enjoining by the competent public servant to the person concerned to desist from indulging in the act and the person to whom the directive has been issued must defy the same and repeat the act of public nuisance. Then and then alone Section 291 of IPC will get attracted and not otherwise. In the case on hand, the conditions precedent for invoking Section 291 of IPC are wholly absent.

9.What cannot be done directly cannot be done indirectly also. This doctrine is based upon the Latin maxim "*Quando aliquid prohibetur ex directo, prohibetur et per obliquum*". This principle can be applied to criminal law also. The respondent police could not have registered a case under Section 290 of IPC on their own against the petitioners. In order to overcome the statutory bar created by Section 155 of Cr.Pc, the police invoked Section 291 of IPC. For the reasons set out above, I hold that the very registration of the impugned FIR is a clear abuse of legal process. It is quashed. The criminal original petition is allowed. Connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

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.

<https://hcservices.ecourts.gov.in/hcservices/>



To

1.The Sub Inspector of Police,
Kadayam Police Station,
Tirunelveli District.

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

+1 CC to M/s.K.P.NARAYANA KUMAR, Advocate (SR-34046[F]
dated 11/11/2021)

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09.11.2021

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