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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.03.2022

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P.NO.4727 OF 2022

AND

CRL.M.P.NO.2475 OF 2022

Magesh,  
S/o.Kasinathan

...Petitioner / Sole Accused

Vs

State Represented by  
The Inspector of Police,  
Nolambur Police Station,  
Chennai.

...Respondent / Complainant

PRAYER : This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, to call for the records relating in Crime No.493 of 2021 on the file of the respondent police and quash the same.

For Petitioner : Mr.G.Sasikannan

For Respondent : Mr.A.Gokulakrishnan  
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed, to call for the records relating in Crime No.493 of 2021 on the file of the respondent police and quash the same.

2. The brief facts of the case is that the respondent has suo motu registered a case in Crime No.493 of 2021 against the petitioner for the offence under Sections 143, 269 of IPC and Section 3 of the Epidemic Diseases Act, 1897. The allegation in the complaint against the petitioner is that on 07.06.2021 at about 14.50 hours, the Special Sub-Inspector of Police, Nolambur Police Station, Chennai accompanied with other policemen were on patrol duty to see whether anyone was violating the Section 144 Cr.P.C issued by the Central and State Government to prevent the spread of the Corona, the petitioner was found roaming around in his two wheeler near DAV School, Nolambur, Chennai and when the respondent had enquired the petitioner, he has not stated any



reasons. Based on the complaint given by the Special Sub-Inspector of Police, a case in Crime No.493 of 2021 was registered for the offence punishable under Sections 143, 269 of IPC and Section 3 of the Epidemic Diseases Act, 1897.

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3. The learned counsel for the petitioner would submit that the petitioner had come out of his house for purchase of medicines during Covid-19 pandemic period, whereas, the respondent had registered a case against him. He would further submit that the respondent cannot straight away registered the case under Sections 143, 269 of IPC and Section 3 of the Epidemic Diseases Act, 1897 and there is no material to show that the petitioner had intentionally come out of his house to spread infection to others. He would submit that the Government has also issued orders directing the withdrawal of cases registered during Covid-19 pandemic period and the withdrawal cases have registered for violation of Covid-19 pandemic rules.

4. The learned counsel for the petitioner would further submit that the facts of the case are similar to the case covered in the decision reported in 2018 2 LW (Cr1) 606 [Jeevanandham and others Vs The Inspector of Police Velayuthampalayam Police Station, Karur District] dated 20.09.2018 and in the case of Sri Raja Vs Inspector of Police, Sivakasi Town Police Station Virudhunagar District and other in Cr1.O.P(MD).No.7922 of 2019 etc batch dated 30.08.2019.

5. The learned Additional Public Prosecutor for the respondent would submit that the petitioner was found loitering on 07.06.2021 at 14.50 hours during Covid-19 pandemic period, in defiance the SOP issued by the Central and State Government. He would further submit that the facts of this case are covered under the Judgment referred to above.

6. Heard both sides and perused the materials available on record.

7. In the Judgment reported in 2018 2 LW (Cr1) 606 [Jeevanandham and others Vs The Inspector of Police Velayuthampalayam Police Station, Karur District] dated 20.09.2018, it has been held that the police has no right to file a case under Section 188 of 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 second respondent has no right to register the case and to investigate the matter. Further, there is no material to prove/show that the petitioner had knowingly attempted to spread infection of any disease dangerous to life.



8. A detailed guideline has been issued by this Court in the Judgment cited supra. On this aspect, Section 188 of IPC will not stand against the petitioner. The offence under Section 269 of IPC is concerned, as per the contents of the First Information Report, it is seen that the petitioner protested in an unlawful manner during the pandemic period. No act of violence or untoward incident is reported. It is a trivial matter in which no offence of grievous nature is involved. Even though Section of 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 respondent that at the time of the incident, the petitioner was affected by Covid-19. So, the contention that conducting protest during pandemic period will spread the disease is without any basis. Section 143 IPC is concerned, it specifies the period of punishment for a person who is a member of an unlawful assembly.

9. Section 141 of IPC defines unlawful assembly as under:-

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.

10. In the light of the above definition scanning through the final report, it can be observed that it cannot be termed as



unlawful assembly. Similarly for attracting offence under Section 269 of IPC also, there are no materials to show that the petitioner was affected by Covid-19 virus and because of his the virus spread to others. Since in the absence of any such materials on record, the offence under Section 269 of IPC is not attracted.

11. Considering the nature of allegations and the offence involved in this case, this Court is of the opinion that protesting for the welfare of the public should not held to be a reason for spoiling the future of the petitioner. Unintended casual act, without any act of violence, 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.

12. Taking all these aspects into account, this Court is of the considered view that the proceedings pending in Crime No.493 of 2021 dated 07.06.2021 on the file of the respondent, the Inspector of Police, Nolambur Police Station, Chennai is nothing but abuse of process of law and is hereby quashed. This Criminal Original Petition stands allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-V)

// True Copy //

Sub Assistant Registrar

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To

1.The Inspector of Police,  
Nolambur Police Station,  
Chennai.

2.The Public Prosecutor,  
High Court of Madras.

+1cc to M/s.G.Sasikannan, Advocate, S.R.No.14719

Cr1.O.P.No.4727 of 2022  
and Cr1.M.P.No.2475 of 2022

SKM(CO)  
RVM(29/03/2022)