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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2022

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P.No.5767 of 2022

and

Crl.M.P.Nos.3165 & 3167 of 2022

Valli,
Head Constable-Traffic Wing,
Tiruchencode,
Residing at Karumagoundampalayam,
Tiruchencode, Namakkal.

...Petitioner/Accused

Vs

1. State Represented by
The Inspector of Police,
Tiruchencode Rural Police Station,
Namakkal District.
(Crime No.1082 of 2020)

...1st Respondent/Complainant

2. Arulgugan,
Block Medical Officer,
Government Primary Health Centre,
Erayamangalam, Tiruchencode,
Namakkal.

...2nd Respondent/Defacto
Complainant

Prayer: Criminal Original petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to the C.C.No.222 of 2021 on the file of the Judicial Magistrate Court, Tiruchencode and quash the same by allowing this Criminal Original Petition.

For Petitioner : Mr.M.Mohamed Riyaz

For Respondents

For R1 : Mr.A.Gokulakrishnan
Additional Public Prosecutor

For R2 : No Appearance



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ORDER

This Criminal Original Petition has been filed, to call for the records relating to the C.C.No.222 of 2021 on the file of the Judicial Magistrate Court, Tiruchencode and quash the same.

2.The brief facts as per the FIR is that the second respondent had lodged a complaint against the first respondent alleging that sample for the Covid Test to the petitioner was taken on 10.09.2020 and on 12.09.2020 the petitioner was tested positive and at 4.30 pm when the petitioner was requested to come to Tiruchencode Government Hospital for treatment, she refused to go to the hospital and abused the petitioner. Therefore, FIR was registered in Crime No.1082 of 2020 and the respondent after completion of investigation, has filed the final report against the petitioner for the offences under Sections 269, 353 of IPC and Section 51(b) of the Disaster Management Act, 2005.

3.According to the final report, it is alleged that the petitioner is the Police Head Constable along with other Police Personal underwent SWAB Test of Covid-19 virus on 10.09.2020 at the camp conducted by the defacto complainant and his team and that on 12.09.2020, it was found that the petitioner was tested positive. Therefore, on 12.09.2020 at about 4.00 pm, the defacto complainant had sent health inspectors to the house of the petitioner to inform her to admit in the hospital whereas, the petitioner had refused to go to the hospital for taking treatment. Subsequently, on the instructions given by the defacto complainant on 14.09.2020, the staff of the hospital along with Women Inspector had gone to the petitioner's residence in the ambulance whereas, the petitioner had locked the gate of her house and refused to accompany with the said officials and had prevented them from discharging their official duty.

4.The learned counsel for the petitioner would submit that very case itself is foisted against the petitioner due to the reason that on a previous occasion on 06.05.2020 during the covid pandemic while the petitioner was discharging her duties in the Main entrance of the Namakkal District Collector Office, the Government Doctors of Public Health Department and others had left the hospital without wearing face mask and it was reported by the petitioner and thereby in order to wreck vengeance, a false complaint has been given against the petitioner.

5.The learned counsel for the petitioner would further submit that a reading of the Charge Sheet does not disclose ingredients of offences alleged against the petitioner. Even



assuming the facts without admitting the petitioner has not assaulted any Government Servants or prevented them from performing or discharging their duties. Admittedly, the case against the petitioner herein is that she had remained in the house and locked herself. He would further submit that offences under Sections 269, 353 of IPC and 51(b) of the Disaster Management Act, 2005 cannot be made out since the petitioner had been quarantine in her house itself. There is no material to show that the petitioner had acted in a manner to spread infection of disease dangerous to life.

6.The learned counsel for the petitioner in support of his contention relied on decision of the Hon'ble Supreme Court in Manik Taneja and another Vs State of Karnataka and another, reported in (2015) 7 SCC 423.

" A reading of the above provision shows that the essential ingredients of the offence under Section 353 IPC are that the person accused of the offence should have assaulted the public servant or used criminal force with the intention to prevent or deter the public servant from discharging his duty as such public servant. By perusing the materials available on record, it appears that no force was used by the appellants to commit such an offence. There is absolutely nothing on record to show that the appellants either assaulted the respondents or used criminal force to prevent the second respondent from discharging his official duty. Taking the uncontroverted allegations, in our view, the ingredients of the offence under Section 353 IPC are not made out."

7.The learned counsel for the petitioner would submit that the Government has also proposed to drop all such cases which have been registered against the public during pandemic period.

8.The learned Additional Public Prosecutor appearing for the first respondent would submit that the petitioner was tested positive and she was directed by the officials of the Health Department to get herself admit in the hospital whereas, the petitioner refused to come out of the house and she had remained in the house and locked herself. He would further oppose stating that the petitioner has not only locked herself in the house but also shouted at the officials.

9.Heard both sides and perused the materials available on records.

10.It is the case where the petitioner, as per prosecution



was found to have tested positive and that when the officials had attempted to take her to the hospital, she locked the gate and prevented them from entering into the house. There is no material to show that she has assaulted or used criminal force to deter public servant from discharging his duty and she has done any act likely to spread infection of disease dangerous to life.

11. Taking note of the facts and circumstances of the case that the Government has proposed to drop all similar cases registered against the public during pandemic period and the averments being not made out against the petitioner, this Court is of the opinion that the proceedings pending in C.C.No.222 of 2021 on the file of the Judicial Magistrate Court, Tiruchencode is nothing but abuse of process of law and thereby it is quashed. This Criminal Original Petition stands allowed. Consequently, connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

rgm/arb

To

1. The Judicial Magistrate,
Tiruchencode.
2. The Inspector of Police,
Tiruchencode Rural Police Station,
Namakkal District.
3. The Block Medical Officer,
Government Primary Health Centre,
Erayamangalam, Tiruchencode,
Namakkal.
4. The Public Prosecutor,
High Court of Madras.

+1cc to M/s.Mohammed Riyaz, Advocate, S.R.No.17321

CRL.O.P.No.5767 of 2022
and Crl.M.P.Nos.3165 & 3167 of 2022

PMK(CO)
RGA(31/03/2022)