



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2022

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Cr1.O.P.No.7693 of 2022

Balasubramani

... Petitioner

Vs

The State rep by
The Inspector of Police,
Mathikonepalayam Police Station,
Dharmapuri District.

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, pleaded to call for records relating to the Crime No.18 of 2020 pending on the file of the respondent Police and quash the same.

For Petitioner	:	Mr.V.Sakkarapani
For Respondents	:	Mr.A.Gokulakrishnan Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed, to call for records of FIR in Crime No.138 of 2020 pending on the file of the respondent police and quash the same.

2.The brief facts of the case is that the second respondent has registered a case in Crime No.138 of 2020 against the petitioner for the offence under Sections 188 and 269 of IPC. The allegations in the complaint is that the petitioner in defiance of the promulgatory orders issued under Section 144 of Cr.P.C pursuant to Covid-19 pandemic had driven two wheeler on S.Kottavur bus stop and when the respondent had enquired the petitioner, he has not stated any reasons.

3. The learned counsel appearing 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 has registered the case against him. He would further submit that the respondent cannot straight away register the case under Sections 188 and 269 of IPC and there is no



material to show that the petitioner had intentionally come out to spread infection to others. He would further submit that the Government has also issued orders directing the withdrawal of cases registered during Covid-19 pandemic period for violation of Covid-19 pandemic rules.

4. The learned counsel appearing 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 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 appearing for the respondent would submit that the petitioner was found riding his motor cycle on 04.04.2020 at 10.20 a.m during Covid-19 pandemic/lockdown period, in defiance the Standard Operating Procedure (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 the learned counsel appearing for the petitioner and the learned Additional Public Prosecutor appearing for the respondent.

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 respondent has no right to register the case and to investigate the matter.

8. Further, there is no material to prove that the petitioner had knowingly attempted to spread infection of any disease dangerous to life and 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 coming out during pandemic period will spread the disease is without any basis.

9. Section 269 of IPC defines negligent act to spread infection as under:-

269. Negligent act likely to spread infection of disease dangerous to life



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Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both".

10. Considering the nature of allegations and the offence involved in this case, this Court is of the opinion that coming out of the house during pandemic period 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.

11. Taking all these aspects into account, this Court is of the considered view that the proceedings pending in Crime No.138 of 2020 dated 04.04.2020 on the file of the respondent, the Inspector of Police, Mathikonepalayam Police Station, Dharmapuri District is nothing but abuse of process of law and is hereby quashed. This Criminal Original Petition stands allowed.

Sd/-

Assistant Registrar

True Copy//

Sub Assistant Registrar

kmm

To

1. The Inspector of Police,
Mathikonepalayam Police Station,
Dharmapuri District.

2. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.V.Sakkarapani, Advocate, S.R.No.23741

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AD[co]

NSK/07/07/2022