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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2022

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

CRL.O.P.NO.7703 OF 2022

AND

CRL.M.P.NO.4424 OF 2022

A.Danielwillson

... Petitioner

Vs

State Represented by
The Sub Inspector of Police,
Tiruvarur Taluk,
Tiruvarur.
(Crime No.738 of 2020)

... Respondent

Prayer:

Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, pleaded to call for records and quash the proceedings as against the petitioners in Crime No.738 of 2020, pending on the file of the respondent.

For Petitioner : Mr.M.Fazil Perarivalan

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed, to call for records in Crime No.738 of 2020 on the file of the respondent and quash the same.

2. The brief facts of the case is that the respondent has suo motu registered a case in Crime No.738 of 2020 against the petitioner for the offence punishable under Sections 336, 270, 188 of IPC read with Section 3 of the Epidemic Diseases Act, 1897, 51(b) of the Disaster Management Act, 2005 & Section 179 of the Motor Vehicles Act, 1988. The allegation in the



complaint against the petitioner is that on 27.04.2020, when the Sub-Inspector of Police, Thiruvarur Taluk, Thiruvarur accompanied with two other policemen were on regular 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 riding in his two wheeler near Pavithiramanikkam Kadai Street, Thiruvarur and when the respondent had enquired the petitioner, he has not stated any reasons. Based on the complaint given by the Sub-Inspector of Police, a case in Crime No.738 of 2020 was registered for the offence punishable under Sections 336, 270, 188 of IPC read with Section 3 of the Epidemic Diseases Act, 1897, 51(b) of the Disaster Management Act, 2005 & Section 179 of the Motor Vehicles Act, 1988.

3. The learned counsel appearing for the petitioner would submit that the petitioner had come out of his house for 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 Section 188 of IPC and there is no material to show that the petitioner had intentionally come out to spread infection to others.

4. The learned counsel appearing for the petitioner would further submit that the petitioner has also applied for passport. The learned counsel appearing for the petitioner would submit that the Government has also issued orders directing the withdrawal of cases registered during Covid-19 pandemic period.

5. 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 (Crl) 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 Crl.O.P(MD). No.7922 of 2019 etc batch dated 30.08.2019.

6. The learned Additional Public Prosecutor appearing for the respondent would submit that the petitioner was found riding his two wheeler on 27.04.2020 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.

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



8. 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.

9. 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.

10. Section 188 of IPC defines disobedience to order duly promulgated by public servant to spread infection as under:-

"188. Disobedience to order duly promulgated by Public Servant:

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction.

Shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any persons lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both;

and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

11. Section 270 of IPC defines Malignant act likely to spread infection of disease dangerous to life as under:-



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"Whoever malignantly 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 two years, or with fine, or with both."

12. 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.

13. Taking all these aspects into account, this Court is of the considered view that the proceedings pending in Crime No.738 of 2020 dated 27.04.2020 on the file of the respondent is nothing but abuse of process of law and is hereby quashed. This Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Sub Inspector of Police,
Thiruvarur Taluk,
Tiruvarur.
2. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.M.Mohamed Riyaz, Advocate, S.R.No.23455

Cr1.O.P.No.7703 of 2022

BR(CO)
PM/10/05/2022