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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.04.2022

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.9386 of 2022
and Crl.M.P.No.5471 of 2022

Tamilmaran

... Petitioner

Vs

The State Represented by,
The Inspector of Police,
Veppur Police Station,
Cuddalore District.
(Suo Moto Crime No.1238 of 2020)

... Respondent

PRAYER: This Criminal Original Petition has been filed under Section 482 of Criminal Procedure Code, pleased to call for the records in Crime No.1238 of 2020 on the file of the Inspector of Police, Veppur Police Station, Cuddalore District and quash the proceedings in so far as it relates to the petitioner herein.

For Petitioner : Mr.S.Chandrasekaran
For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to call for the records in Crime No.1238 of 2020 on the file of the Inspector of Police, Veppur Police Station, Cuddalore District and quash the proceedings in so far as it relates to the petitioner herein.

2. The case of the prosecution is that on 14.08.2020, at about 03.15 p.m., when the respondent police were on patrol duty to monitor the adherence of 144 Cr.P.C., order imposed by the Government in order to control and prevent the Corona Virus, the petitioner was riding a two wheeler without wearing mask. Thereby, the respondent police had registered a suo moto case in



Crime No. 1238 of 2020 against the petitioner for the offences under Sections 188 and 270 of IPC. The said criminal proceedings is under challenge in this criminal original petition.

3. The learned counsel appearing for the petitioners would submit that the petitioner is innocent. According to Section 195(1)(a) of Cr.P.C., no Court can take cognizance of an offence under Section 188 of IPC, unless the public servant has a written order from the authority. He would further submit that the petitioner had never involved in any unlawful activity and there is no evidence that the petitioner restrained anybody and the respondent had registered the case under Sections 188 and 270 of IPC., as against the petitioner. Therefore, he sought for quashing the proceedings.

4. The learned counsel for the petitioner would further submit that there was absolutely no violence and that there was no intention on the part of the petitioner to spread infection of disease dangerous to life. There is absolutely no material to show that the petitioner was infected with any disease dangerous to life. Thereby, the proceedings against the petitioner is nothing but abuse of process of law.

5. The learned counsel for the petitioner would also 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 the case of 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. He would further submit that though the incident was happened during the Covid-19 pandemic period, there is no material to show that neither the petitioner was affected by Covid-19 nor he indulged in any Malignant Act likely to spread infection of disease dangerous to life.

6. The learned counsel for the petitioner would further submit that under similar circumstances in the case of Prakash Vs. The Inspector of Police, Samayanallur Police Station and other in Crl.O.P.(MD).No.8657 of 2021, this Court finding that it is trivial in nature and that the petitioners have not intentionally done any Act to spread the disease, has quashed the proceedings. He would also submit that in similar matters, the Government has also proposed to drop the proceedings, which have been registered during the pandemic period against the public.



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7. The learned counsel for the petitioner would submit that in a similar circumstances, the Madurai Bench of this Court had allowed the petitions and quashed the proceedings in the following cases:-

(i) C.Manikandan Vs The Sub-Inspector of Police, Thoothukudi District made in Crl.O.P(MD).No.9150 of 2021 dated 12.07.2021.

(ii) Prakash Vs The Inspector of Police, Madurai and another made in Crl.O.P(MD).No.8657 of 2021 dated 13.07.2021.

(iii) Astile Sebas Vs The Sub Inspector of Police, Kanyakumari District and another made in Crl.O.P(MD).No.4819 of 2021 dated 19.07.2021.

(iv) S.Rajendran Vs The Inspector of Police, Madurai District and another made in Crl.O.P(MD).No.9724 of 2021 dated 22.07.2021.

(v) Vijaya Vs The Inspector of Police, Madurai District and another made in Crl.O.P(MD).No.10172 of 2021 dated 29.07.2021.

(vi) Rajan Vs The Sub Inspector of Police, Tirunelveli District made in Crl.O.P(MD).No.10926 of 2021 dated 09.08.2021.

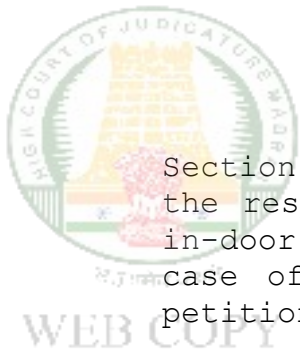
(vii) Ranjith Vs The Inspector of Police, Madurai and another made in Crl.O.P(MD).No.11003 of 2021 dated 10.08.2021.

8. The learned Additional Public Prosecutor for the respondent would submit that the petitioner during the Covid-19 pandemic period had breached the Covid-19 pandemic protocol and attempted to spread infection to others. However, he would fairly concede that there was no violence.

9. He would further submit that Section 188 of IPC is a cognizable offence and therefore it is the duty of the police to register a case. Though there is a bar under Section 195(1) (a) of Cr.P.C. to take cognizance for the offence under Section 188 of IPC, it does not mean that the police cannot register FIR and investigate the case. Therefore, he vehemently opposed the quash petition and prayed for dismissal of the same.

10. Heard the learned counsel and perused the materials available on record.

11. The offence under Sections 188 and 270 of IPC are concerned, as per the contents of the First Information Report, it is seen that the petitioner was riding a two wheeler without wearing mask during the pandemic period. It is a trivial matter in which no offence of grievous nature is involved. Even though



Section 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 virus.

12. 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."

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

"270. Malignant Act likely to spread infection of disease dangerous to life -

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."

14. The only question for consideration is that whether the registration of case under Sections 188 and 270 of IPC., registered by the respondent is permissible under law or not?



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In this regard it is relevant to extract Section 195(1)(a) of the Criminal Procedure Code, 1973:-

"195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. (1) No Courts shall take cognizance-

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit, such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;..."

Therefore, it is very clear that for taking cognizance of the offences under Section 188 of IPC, the public servant should lodge a complaint in writing and other than that no Court has power to take cognizance.

15. The learned counsel for the petitioner, in support of his contentions, relied upon a judgement in a batch of quash petitions, reported in 2018 2 L.W (Cr1) 606 in Cr1.O.P(MD).No.1356 of 2018, dated 20.09.2018 in the case of Jeevanandham and others Vs State represented by the Inspector of Police, Velayuthampalayam Police Station, Karur District, and this Court held in Paragraph-25, as follows :-

"25. In view of the discussions, the following guidelines are issued insofar as an offence under Section 188 of IPC, is concerned:

a) A Police Officer cannot register an FIR for any of the offences falling under Section 172 to 188 of IPC.

b) A Police Officer by virtue of the powers conferred under Section 41 of Cr.P.C will have the authority to take action under Section 41 of Cr.P.C., when a cognizable offence under Section 188 IPC is committed in his presence or where such action is required, to prevent such person from committing an offence under Section 188 of IPC.

c) The role of the Police Officer will be confined only to the preventive action as



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stipulated under Section 41 of Cr.P.C and immediately thereafter, he has to inform about the same to the public servant concerned/authorised, to enable such public servant to give a complaint in writing before the jurisdictional Magistrate, who shall take cognizance of such complaint on being prima facie satisfied with the requirements of Section 188 of IPC.

d) In order to attract the provisions of Section 188 of IPC, the written complaint of the public servant concerned should reflect the following ingredients namely;

i) that there must be an order promulgated by the public servant;

ii) that such public servant is lawfully empowered to promulgate it;

iii) that the person with knowledge of such order and being directed by such order to abstain from doing certain act or to take certain order with certain property in his possession and under his management, has disobeyed;

and

iv) that such disobedience causes or tends to cause;

(a) obstruction, annoyance or risk of it to any person lawfully employed; or

(b) danger to human life, health or safety; or

(c) a riot or affray.

e) The promulgation issued under Section 30(2) of the Police Act, 1861, must satisfy the test of reasonableness and can only be in the nature of a regulatory power and not a blanket power to trifle any democratic dissent of the citizens by the Police.

f) The promulgation through which, the order is made known must be by something done openly and in public and private information will not be a promulgation. The order must be notified or published by beat of drum or in a Gazette or published in a newspaper with a wide circulation.



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g) No Judicial Magistrate should take cognizance of a Final Report when it reflects an offence under Section 172 to 188 of IPC. An FIR or a Final Report will not become void ab initio insofar as offences other than Section 172 to 188 of IPC and a Final Report can be taken cognizance by the Magistrate insofar as offences not covered under Section 195(1)(a)(i) of Cr.P.C.

h) The Director General of Police, Chennai and Inspector General of the various Zones are directed to immediately formulate a process by specifically empowering public servants dealing with for an offence under Section 188 of IPC to ensure that there is no delay in filing a written complaint by the public servants concerned under Section 195(1)(a)(i) of Cr.P.C."

16. The learned counsel for the petitioner also relied upon the similar facts of the case covered under recent Judgment of this Court in the case of Sri Raja Vs Inspector of Police, Sivakasi Town Police Station Virudhunagar District and other in CrI.O.P(MD).No.7922 of 2019 etc batch dated 30.08.2019 reported in (2019) 4 MLJ (CrI) 175.

17. In the light of the above definition, for attracting offences under Sections 188 and 270 IPC also, there are no materials to show that the petitioner was affected by Covid-19 virus and the virus spread to others. Since in the absence of any such materials on record, the offence under Sections 188 and 270 IPC are not attracted.

18. In the case on hand, the First Information Report has been registered by the respondent for the offences under Sections 188 and 270 of IPC. He is not a competent person to register FIR for the offences under Section 188 of IPC. As such, the First Information Report or Final Report is liable to be quashed for the offences under Section 188 of IPC.

19. Taking all these aspects into account, this Court is of the considered view that the proceedings in Crime No.1238 of 2020 on the file of the respondent police is nothing but abuse of process of law and is hereby quashed.



20. Accordingly, this Criminal Original Petition stands allowed. Consequently, connected Criminal Miscellaneous Petition is closed.

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s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Inspector of Police,
Veppur Police Station,
Cuddalore District.
2. The Public Prosecutor,
High Court of Madras.

Cr1.O.P.No.9386 of 2022
and Cr1.M.P.No.5471 of 2022

SKM(CO)
SP(17/05/2022)