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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.04.2022

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THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.8803 of 2022

and

Crl.M.P.No.5128 of 2022

Subash Chanthira Bose,
S/o.Dhatchinamoorthy

... Petitioner

Vs

The State Represented by,
The Inspector of Police,
Srimushnam Police Station,
Cuddalore District.
(Crime.No.189 of 2021)

... Respondent

Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, pleased to call for the records relating the FIR in Crime No.189 of 2021 on the file of the respondent and quash the same.

For Petitioner : Mr.T.Muruganantham

For Respondent : Mr.A.Gokulakrishnan
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed, to call for the records relating the FIR in Crime No.189 of 2021 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.189 of 2021 against the petitioner for the offence punishable under Sections 188 and 269 of IPC. The allegation in the complaint against the petitioner is that on 25.05.2021, when the Sub-Inspector of Police, Srimushnam Police Station, accompanied with two 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 in his two wheeler in front of Srimushnam Theradi Veedhi 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.189 of 2021 was registered for the offence punishable under Sections 188 and 269 of IPC.

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 188 and 269 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 submit that the petitioner has completed his graduation in B.E and had applied for passport seeking job in abroad. When the case is pending, it came to notice of this Court that because of the pendency of the case, enquiry of the Passport Officer is kept pending. He would further 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.

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 (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.

6. The learned counsel for the petitioners would further 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 Cr1.O.P(MD).No.9150 of 2021 dated 12.07.2021.

(ii) Prakash Vs The Inspector of Police, Madurai and another made in Cr1.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 Cr1.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.

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(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.

7. The learned Additional Public Prosecutor appearing for the respondent would submit that the petitioner was found loitering in his two wheeler on 25.05.2021 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.

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

9. In the Judgment reported in 2018 2 LW (Crl) 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.

10. 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.

11. 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:





14. Taking all these aspects into account, this Court is of the considered view that the proceedings pending in Crime No.189 of 2021 dated 25.05.2021 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 Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS III)

/True Copy//

Sub Assistant Registrar

rgm/arb

To

1. The Inspector of Police,
Srimushnam Police Station,
Cuddalore District.
(Crime.No.189/2021)

2. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.T.Muruganatham, Advocate, S.R.No.27387

Cr1.O.P.No.8803 of 2022
and
Cr1.M.P.No.5128 of 2022

PM[co]
NSK 05/05/2022