



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2022

CORAM

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.O.P.No.9059 of 2022

and

Crl.M.P.No.5266 of 2022

Subramanian

Vs

... Petitioner

1. The State rep., by,
The Sub-Inspector of Police,
Madathukulam Police Station,
Tiruppur District.
(Crime.No.1297 of 2020)

2. Marimuthu.S,
Sub-Inspector of Police,
Madathukulam Police Station,
Tiruppur district.

... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of the Criminal Procedure Code, pleaded to call for the records in Crime No.1297 of 2020 on the file of the first respondent police and quash the same.

For Petitioner	:	Mr.K.T.S.Sivakumar
For Respondents	:	Mr.A.Gokulakrishnan Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed seeking to call for the records in Crime No.1297 of 2020 on the file of the first respondent police and quash the same.

2. The brief facts of the case is that the second respondent has suo moto registered a case in Crime No.1297 of 2020 against the petitioner and the members of DMK political parties for the offence punishable under Section 143, 269 & 271 of I.P.C The allegations in the complaint against the petitioner is that on 24.10.2020, when the Sub-Inspector of Police, Madathukulam



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 virus, the petitioner and other accused belong to DMK political party were found assembled at Madathukulam Bus stand for welcoming their MLA without getting proper permission from the authorities concerned. Thereby, the first respondent had registered a case against them.

3. The learned counsel appearing for the petitioner would submit that the petitioner applied for passport and by the letter for clarification dated 31.03.2021 sent by the Regional Passport Office, the petitioner came to know about that the case in Crime No.1297 of 2020 is pending against the petitioner. He would further submit that the first respondent cannot straight away register a case under Section 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 further submit that the Government has also issued orders directing withdrawal of cases registered during Covid-19 pandemic period which was 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 Additional Public Prosecutor appearing for the respondent would submit that the petitioner during Covid-19 pandemic/lockdown period, along with other accused were assembled in Madathukulam Bus stand for welcoming their MLA on 24.10.2020, 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 Judgments 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 143 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. In so far, Section 143 of IPC is concerned,
143. Punishment –

Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

The expression "unlawful assembly" is defined in Section 141 of IPC and any member of the said unlawful assembly is punishable under Section 143 of IPC. If the object of the assembly is not unlawful, the Act cannot attract Section 141 of IPC. Thereby any person forming such assembly cannot neither be convicted under Section 143 of IPC nor can be convicted either under Section 147 or Section 149 of IPC.

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 respondents 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 269 of IPC defines negligent act to spread infection as under:-

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

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."

12. In this case other than gathering to welcome their MLA, the petitioner has not indulged in any act of violence.

13. 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 general public.

WEB COPY

14. Taking all these aspects into account, this Court is of the considered view that the proceedings pending in Crime No.1297 of 2020 dated 24.10.2020 on the file of the first respondent police 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 VII)

//True Copy//

Sub Assistant Registrar

ham

To

1. The Sub-Inspector of Police,
Madathukulam Police Station,
Tiruppur District.
2. The Public Prosecutor,
High Court of Madras.

+1cc to Mr.K.T.S.Sivakumar, Advocate, S.R.No.28124

Cr1.O.P.No.9059 of 2022
and
Cr1.M.P.No.5266 of 2022

RK[co]
NSK/17/05/2022