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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2022

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.21424 of 2021

Azhagupandiyan @ Pandiyan

... Petitioner

Vs.

State Rep. by,
The Inspector of Police,
Anaikaranchatram Police Station,
Mayiladuthurai District.
(Crime No.556 of 2021).

... Respondent

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records in connected with the impugned FIR in Crime No.556 of 2021 on the file of the respondent and quash the same.

For Petitioner : Mr.M.Vijayaragavan

For Respondent : Mr.E.Raj Thilak,
Additional Public Prosecutor

ORDER

This Criminal Original Petition has been filed to quash the FIR in Crime No.556 of 2021, on the file of the respondent Police.

2.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor for the 1st respondent.

3.The case of the petitioner is that on 12.06.2021, at about 17.15 hours, the petitioner herein was roaming in the road by using his two wheeler at the time of prohibition due to COVID-19 pandemic. Hence, a case in Crime No.556 of 2021, for the offences punishable under Sections 188, 269, 270 and Section 3 of the Epidemic Diseases Act, 1897 has been registered on the same day. The present petition is filed to quash the First Information Report in Crime No.556 of 2021.



4.This petition is filed mainly on the ground that Section 188 IPC is non-cognizable offence and the Police has no right to register the case and investigate. Section 269 IPC is concerned, there is no intention on the part of the petitioner to spread the disease to another and simply he was roaming in that area.

5.Heard both sides.

6.In the judgment reported in "2018(2) L.W (Cr1.) 606 In Jeevanandhan and others Vs. State rep. by Inspector of Police, Velayuthampalayam Police Station, Karur District and another", it has been held that the Police has no right to file a case under Section 188 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. A detailed guideline has been issued by this Court in the judgment cited supra. On this aspect, Section 188 IPC will not stand against the petitioner.

7.The offence under Section 269 IPC is concerned, as per the contents of the First Information Report, it is seen that the petitioner was simply roaming in the road. 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. So the contention that roaming in the road during the pandemic period will spread the disease is without any basis.

8.Considering the nature of allegations and the offences involved in this case, this Court is of the considered view that roaming in the road without any reason should not be a reason for spoiling the future of the petitioner. Unintended casual act 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. Taking all these aspects into account, this Court is of the considered view that the First Information Report in in Crime No.556 of 2021, on the file of the respondent is liable to be quashed and the same is quashed.



9. In fine, this petition is allowed.

Sd/-
Assistant Registrar (CS-VI)

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Sub Assistant Registrar

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To

1. The Inspector of Police,
Anaikaranchatram Police Station,
Mayiladuthurai District.

2. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.M.Vijayaragavan, Advocate SR.No.2837

Crl.O.P.No.21424 of 2021

KSM(CO)
GMY (22/02/2022)