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Crl.O.P.No.30287 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 08.12.2022

CORAM

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.30287 of 2022

and

Crl.M.P.No.18559 of 2022

Karuna

Vs.

... Petitioner

1.The State represented by its
The Inspector of Police,
Thiruvallur Town Police Station,
Tiruvallur District.

2.Babu

... Respondents

PRAYER: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records relating to the case registered in Crime No.3577 of 2020 dated 13.10.2020 pending on the file of 1st respondent police and quash the F.I.R the same.

For Petitioner : Mr.D.Dayalan

For 1st Respondent : Mr.S.Santhosh
Government Advocate (Criminal Side)



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ORDER

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This Criminal Original Petition has been filed to quash the First Information Report registered in Crime No.3577 of 2020, dated 13.10.2020 pending on the file of 1st respondent police.

2. The learned counsel for the petitioner submitted that the First Information Report was registered against the petitioner and other accused for the offences under Sections 143, 188, 270 and 353 of IPC. It is further submitted that for registering a complaint under Section 188 of IPC, only a lawfully empowered public servant can alone give a complaint and Police officer cannot register the FIR for any of the offences falling under Sections 172 to 188 of IPC. Therefore, registration of First Information Report under Section 188 against the petitioner and other accused is illegal. Section 188 reads as follows:

“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



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cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person 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 trends 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.

3. He further submitted that this court in Crl.O.P.No.17903 of 2021 and Crl.O.P.No.11291 of 2022 quashed the cases registered under Section 143 and 341 of IPC and 143, 188 and 341 of IPC respectively on the ground that the petitioners herein were engaged in protest, which is their fundamental right. No public lodged complaint and no public got affected, due to the protest conducted by the petitioners. Petitioners had only raised slogans against the Government and the same would not amount to commission of offence and it is a fundamental right under the constitution of India.

4. The learned counsel for the petitioner relied upon a Judgment in



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Mahaboob Basha Vs. Sambanda Reddiar and others reported in ***1994(1)***

Crimes, Page 477. He also relied upon a judgment in a batch of quash petitions, reported in ***2018-2-L.W. (Crl.) 606*** in ***Crl.O.P. (MD).No. 1356 of 2018***, dated 20.09.2018 in the case of ***Jeevanandham and others Vs. State rep. by the Inspector of Police, 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 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



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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.

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.

5. He further submitted that even in the case before hand, when the



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petitioner and other accused staged protest connected with an issue, the defacto complainant said to have informed them that there is a prohibitory order passed under Section 144 of CrPC. He directed the accused in this case to meet the Collector with representatives of two or three persons. Thereafter, it was alleged that petitioner had pushed the defacto complainant and went to meet the Collector along with 17 others.

6. The learned Government Advocate (Criminal Side) submitted that the investigation in this case is completed and final report is yet to be filed.

7. Heard learned counsel for both sides.

8. While conceding with the submission of the learned counsel for the petitioner that a Police Officer cannot register the First Information Report under Section 188 of IPC, this Court finds that there is a prima facie materials available for registering and prosecuting the case for the offences under Section 143, 270 and 353 of IPC. Petitioner assaulted the defacto complainant and went inside the Collector's office along with 17 others, when there is a prohibitory Order preventing any protest during the COVID-19 period.



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9. In such view of the matter, this Criminal Original Petition is allowed in part. Consequently, the connected Miscellaneous Petition is closed.

10. The First Information Report registered for the offence under Section 188 of IPC alone is quashed. The respondent is directed to proceed with the investigation for other offences under Sections 143, 270 and 353 of IPC and file appropriate final report.

08.12.2022

Index:Yes/No

Speaking/Non speaking order

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To

1.The Inspector of Police,
Thiruvallur Town Police Station,
Tiruvallur District.

2.The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN.J.,

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