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Crl.OP.(MD)No.541 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2023

CORAM

THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.(MD).No.541 of 2023
Crl.M.P.(MD).No.501 & 503 of 2023

R.Annadurai

...Petitioner

Vs.

1.The Inspector of Police,
Rameswaram Town Police Station,
Ramanathapuram District.
(Crime No.72 of 2013)

2.Muruganantham,
Sub Inspector of Police,
Rameswaram Town Police Station,
Ramanathapuram District.

...Respondents

Prayer:- This Criminal Original Petition is filed under Section 482 of Cr.P.C.to call for the records in the case in S.T.C.No.168 of 2013 on the file of the District Munsif Cum Judicial Magistrate Court, Rameswaram and quash the same so far as the petitioner/Accused No.1 concerned as illegal, violation of law.

For Petitioner : Mr.Balamurugan.P

For Respondents : Mr.S.Santhosh (For R1)



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Government Advocate (Crl side)

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ORDER

This Criminal Original Petition has been filed to call for the records in the case in S.T.C.No.168 of 2013 on the file of the District Munsif Cum Judicial Magistrate Court, Rameswaram and quash the same so far as the petitioner/Accused No.1 concerned as illegal, violation of law.

2.The learned counsel for the petitioner submitted that petitioner and other accused in S.T.C.No.168 of 2012 are being prosecuted for the offences under Section 143 and 188 I.P.C. Petitioner had conducted protest against registration of criminal case by the respondent Police. Their protest was peaceful. The registration of case under Section 188 I.P.C. is against Section 195 Cr.P.C. The ingredients for prosecuting the petitioner and other accused under Section 143 I.P.C. is not made out. Therefore, this petition is filed for quashing.

3.The learned Government Advocate (Criminal side) opposed this petition on the ground that despite petitioner and other accused were requested



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to stop the protest, they proceeded to organise the protest and therefore the case was registered.

4.Considered the rival submissions and perused the records.

5.It is seen from the First Information Report allegations that there was a case registered in connection with dispute between Union Members of Rameswaram Railway Employees Organisation on 25.04.2012. The respondent Police registered a complaint. Communist party members sought permission of the respondent Police for conducting a protest on 25.04.2012 and they also sought permission for conducting a perani on 11.05.2013. Since Rameshwaram is visited by pilgrims, permission was denied and denial order was served on the petitioner. However, the 187 men and 29 women under the leadership of the petitioner had conducted the protest. Therefore, a case was registered originally under Section 147, 294 (b), 353 I.P.C. After investigation, final report was filed under Section 143 and 188 I.P.C.

6.This Court in Crl.O.P.No.23022 of 2022 while dealing with quashing of case registered under Section 143 & 341 IPC observed that only if the



unlawful assembly confirms to the definition of unlawful assembly as defined under Section 141 IPC, the member of unlawful assembly can be prosecuted under Section 143 IPC. It is also relevant to note the definition of Unlawful Assembly:

“Unlawful Assembly-

An assembly of five or more persons is designated an “unlawful assembly”, if the common object of the persons composing that assembly is -

(i) to overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

(ii) to resist the execution of any law, or of any legal process; or

(iii) to commit any mischief or criminal trespass, or other offence; or

(iv) by means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or

(v) by means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.-

7.In the case before hand, there is no specific allegations against the petitioner or any of the member of the unlawful assembly that they used



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criminal force with a common object of overawe the Central or State Government, resisted the execution of any law or of any process, committed any mischief or criminal trespass, take possession of any property, deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right, compelled any person to do what he is not legally bound to do or to omit to do what he is legally entitled to do. In the absence of specific allegations in this regard, it is no doubt that the alleged assembly cannot be considered as unlawful assembly and the members of alleged unlawful assembly cannot be prosecuted for the offence under Section 143 IPC.

8. Section 188 of IPC defines disobedience to order duly promulgated by public servant to spread infection. 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.

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 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



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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.

9.In the case before hand it appears nobody from railway has given a complaint. First Information Report was registered on the basis of the complaint given by the Sub-Inspector of Police, Rameshwaram. Ingredients for prosecuting the petitioner under Section 143 I.P.C. is not made out. F.I.R. under Section 188 I.P.C. was registered without following the procedure under Section 195 Cr.P.C. Thus, this Court is of the view that petitioner cannot be proceeded under Section 143 and 188 I.P.C. Continuance of the trial proceedings is harassment and abuse of process of law.

10.In this view of the matter, this Criminal Original Petition is allowed. The case in S.T.C.No.168 of 2013 on the file of the District Munsif Cum Judicial Magistrate Court, Rameswaram, against the petitioner is quashed. Consequently, connected miscellaneous petitions are closed.



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Index: Yes/No

Speaking/Non speaking order

To

1.The Inspector of Police,
Rameswaram Town Police Station,
Ramanathapuram District.

2.The Public Prosecutor
High Court of Madras.



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G.CHANDRASEKHARAN.J.,

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