



CrI.O.P.No.5199 of 2021

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.03.2023

CORAM

THE HONOURABLE MR. JUSTICE SUNDER MOHAN

CrI.O.P. No.5199 of 2021

and

CrI.M.P. No. 3341 of 2021

- 1.Mohamad Aslam
- 2.Masood Ahamed
- 3.Askar Hussain
- 4.Sanaullah
- 5.Pyare Jhon
- 6.Mukthiyar
- 7.Mohammed Gows
- 8.Mubarak Basha
- 9.Suhaf
- 10.Ajmal
- 11.Taj mohammed



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12. Abdullah Basha

13. Sanaullah

14. Abubakkar

15. Sanaulla

... Petitioners

Vs.

1. The State rep. by its
Inspector of Police
Thirupathur Town Police Station
Thirupathur Town and District

2. Raman

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to the final report / charge sheet in C.C.No.71 of 2020 dated 30.07.2020 on the file of Judicial Magistrate-I, Thirupathur and quash the same.

For Petitioners : Mr. J.Prakasam

For Respondent 1 : Mr. A.Damodaran
Additional Public Prosecutor

For Respondent 2 : No Appearance.



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ORDER

This Criminal Original Petition is filed to quash the final report filed for the offences under Section 143, 188, 269, 270, 271 and 353 of the IPC, 1860, read with Section 2 and 3 of the Epidemic Disease Act, 1897 and Section 51(b) of the Disaster Management Act, 2005.

2. It is alleged that the petitioners had assembled in a crowded place violating the orders passed under Section 144 of the Cr.P.C. and not following social distancing norms inspite of the order to disperse from the crowded place.

3. The learned counsel for the petitioners would submit that cases arising out of similar final reports were withdrawn by the Government. In any case, the learned counsel would submit that this Court had quashed similar final reports.



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4. The learned counsel for the petitioners would also submit that the 1st respondent had no jurisdiction but had investigated and filed a final report in respect of the offences under Section 188 of IPC.

5. The learned Additional Public Prosecutor also fairly conceded that this Court had quashed similar final reports in ***Crl.O.P.No. 23044 of 2022 dated 23.09.2022*** and produced the order copy of the same.

6. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor and perused the records.

7. As regards the offence under Section 143 of the IPC, it seen that the charge sheet does not state as to how the assembly by the petitioners attracted the offence of unlawful assembly. There is no allegation in the charge sheet to attract the offence under Section 143 I.P.C.



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WEB COPY 8. As regards the offence under Section 188 of the Indian Penal Code the first respondent / police has no jurisdiction to lay a final report for the offence under Section 188 of the Indian Penal Code in view of the bar under Section 195 (1)(a)(i) of the Criminal Procedure Code. As per the Section 195 (1)(a)(i) of the Criminal Procedure Code, only a public servant can maintain a complaint and no Court shall take cognizance in the absence of the complaint filed by the said public servant.

9. As regards the offence under Section 353 IPC, this Court finds that there are no allegations in the charge sheet suggesting that the petitioners had obstructed, assaulted or used any criminal force to any public servant or prevented or deterred any public servant from discharging his public duty. Hence, the offence under Section 353 I.P.C., also is not made out.



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10. As regards offences under Section 270 and 271 of the IPC, Section 2 and 3 of the Epidemic Disease Act and Section 51(b) of the Disaster Management Act, this Court had already quashed similar complaints. This Court in the Judgement reported in **2021 SCC Online Mad 13943 – Srinath Vs. State Rep. by Inspector of Police and Another**, had quashed the First Information Report for the offences under Section 269 of the IPC read with Section 3 of the Epidemic Diseases Act, 1897. In paragraph no.6 of the said Judgement this Court had observed as follows:

“A detailed guideline has been issued by this Court in the judgment reported in 2018(2) L.W (Crl.) 606 In Jeevanandhan and others Vs. State rep. by Inspector of Police, Velayuthampalayam Police Station, Karur District and another). 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



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case. It is also not the case of the respondent police 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.”

11. This Court finds that the allegation of violation of the orders passed under 144 Cr.P.C is trivial in nature and the observation made by this Court, which is extracted above squarely applies to the facts of the instant case as well.

12. For the above said reasons, this Court is inclined to quash the final report. In the result, this petition is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

28.03.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation : Yes/No
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To

1.The Judicial Magistrate-I,
Thirupathur.

2.The Inspector of Police
Thirupathur Town Police Station
Thirupathur Town and District.



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SUNDER MOHAN. J,

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