



WEB COPY



Crl.O.P.No.5744 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:20.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.5744 of 2023

and

Crl.M.P.No.3589 of 2023

Abinesh Ragupandi

...

Petitioner

Vs.

The State Represented by,
The Inspector of Police
Vadapalani Police Station,
Chennai District.
Crime No.16 of 2022

...

Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for records connected with the impugned FIR in Crime No.16 of 2022 and quash the same in so far as the petitioner (A5) is concerned.

For Petitioner : M/s. S.Vanmathi

For Respondent : Mr.S.Santhosh
Government Advocate (Crl. Side)



Crl.O.P.No.5744 of 2023

ORDER

WEB COPY This Criminal Original Petition is filed to call for records connected with the impugned FIR in Crime No.16 of 2022 and quash the same in so far as the petitioner (A5) is concerned.

2. The learned counsel for the petitioner submitted that petitioner is the 5th accused in Crime No.16 of 2022 registered for the offence under Sections 269 of IPC, 1860, Section 3 of Epidemic Diseases Act, 1897 and Section 51(b) of The Disaster Management Act, 2005. It is the submission of the learned counsel for the petitioner that FIR allegations do not make out the offence under Section 269 of IPC against the petitioner that he 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.

3. It is her further submission that, as per the Section 3 of Epidemic Diseases Act, 1897, any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code. If that be the case, respondent police cannot straight away register the FIR. Bar under Section 195 of Cr.P.C



Crl.O.P.No.5744 of 2023

comes to operate, that no Court shall take cognizance of any offence punishable under Section 172 to 188 of IPC, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is subordinate.

4. Similarly, the offence under Section 51(b) of The Disaster Management Act, 2005 states that, whoever, without reasonable cause refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act shall be liable for punishment.

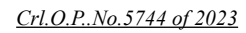
5. Section 60 of The Disaster Management Act, 2005 dealt with taking cognizance of the offences. As per this Section, no Court shall take cognizance of an offence under this Act except on a complaint made by the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or Officer authorized in this behalf by the Authority or Government, as the case may be.



Crl.O.P.No.5744 of 2023

6. The "complaint" as per definition given under 2(d) of Cr.P.C means, any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code, that some person, whether known or unknown, has committed an offence, but does not include a police report.

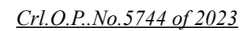
7. In the case before hand, no complaint was given, yet the respondent police straight away registered the FIR., which is impermissible in law. It is her further submission that, all the offences are punishable with imprisonment. The offence punishable under Section 269 of IPC is punishable with imprisonment of either description for a term which may extend to six months, or with fine, or with both. The offence punishable under Section 3 of Epidemic Diseases Act, 1897 is punishable with imprisonment for a term which shall not be less than three months, but which may extend to five years, and with fine, which shall not be less than fifty thousand rupees, but which may extend to two lakh rupees. The offence punishable under Section 51(b) of The Disaster Management Act, 2005 is punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on



conviction be punishable with imprisonment for a term which may extend to two years.

8. It is the further submission of the learned counsel for the petitioner that there is no loss of life or imminent danger caused to life in this case. Therefore, punishment if at all to be imposed can be imposed only to the extent of one year or with fine, or with both under Section 51(b) of The Disaster Management Act, 2005. She further submitted that offence under Section 269 of IPC and Section 51(b) of The Disaster Management Act, 2005 cannot be taken cognizance for the reason that, there is a bar under Section 468 of Cr.P.C. Thus, she prayed for quashment of the proceedings.

9. The learned Government Advocate (CrI. Side) opposed the petition on the ground that the accused in Crime No.16 of 2022, when there was a ban that no one should move out of the house between 22 hrs to 5 hrs., to prevent the spread of Corona Virus, had, without any reason, came out of their houses and found in public place near Vadapalani Bus Stop. Therefore, the case came to be registered. The investigation in this case is not completed and it will be



10. Considered the rival submissions and perused the records. It is pertinent to refer to the offences for which FIR was registered in this case.

“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.”

Any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code (45 of 1860).

Whoever, without reasonable cause—"

(b) Whoever, without reasonable cause refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the



Crl.O.P.No.5744 of 2023

National Executive Committee or the State Executive Committee or the District Authority under this Act, shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both, and if such obstruction or refusal to comply with directions results in loss of lives or imminent danger thereof, shall on conviction be punishable with imprisonment for a term which may extend to two years.

11. Section 269 of Cr.P.C states that a person can be prosecuted if he 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. In the case before hand, except the allegation that the petitioner and other accused violating the prohibition order, came out of their houses between 22 hrs to 5 hrs on 09.01.2022, there is no other material produced to show that the petitioners and other accused were affected by Covid-19, when they came out of their house in a public place and that resulted in spread of Covid -19 or any other dangerous disease.

12. In the absence of any material in support of the allegations that



Crl.O.P.No.5744 of 2023

petitioner was responsible for spreading the infectious disease which is dangerous to life, this Court is of the considered view that, petitioner cannot be prosecuted under Section 269 of IPC. That apart, this offence is punishable with imprisonment of six months, or with fine, or with both. Even if final report is filed, there is a bar under Section 468 of Cr.P.C for taking cognizance of this offence.

13. So far as the offence under Section 3 of Epidemic Diseases Act, 1897 is concerned, it is made clear that any person disobeying any regulation or order made under this Act shall be deemed to have committed an offence punishable under section 188 of the Indian Penal Code. There is bar for the respondent police to register the FIR if any offences punishable under Section 172 to 188 of IPC is committed for the reason there is prohibition under Section 195 of Cr.P.C., that no Court shall take cognizance of any offence punishable under Sections 172 to 188 of IPC unless a complaint in writing has been given to the Court by public authority concerned. The complaint as contemplated under Section 195 of Cr.P.C is not given in this case, but straight away FIR came to be registered. Therefore, this Court is of the view that, petitioner cannot be prosecuted for the offence under Section 3 of



Epidemic Diseases Act, 1897.

WEB COPY

14. It is relevant to refer to 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. The relevant extract is 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 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.

15. So far as the offence under Sections 51(b) of The Disaster Management Act, 2005, whoever, without reasonable cause refuses to comply with any direction given by or on behalf of the Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority under this Act, shall on conviction be punishable with imprisonment for a term which may extend to one year or with fine, or with both. If there is loss of lives or imminent danger, the imprisonment may extend to two years. There is no loss or



Crl.O.P.No.5744 of 2023

imminent danger caused to any life. Thus, there is a bar under Section 468 of Cr.P.C for taking cognizance of this offence. That apart, this offence can be taken cognizance only on the complaint given by Central Government or the State Government or the National Executive Committee or the State Executive Committee or the District Authority as the case may be. No complaint as contemplated under Section 60 of the Act was given, but, only the FIR is came to be registered, which is impermissible.

16. In conclusion, for the reasons stated above, this Court finds that petitioner cannot be prosecuted for the offences under Sections 269 of IPC, 1860, Section 3 of Epidemic Diseases Act, 1897 and Section 51(b) of The Disaster Management Act, 2005.

17. In this view of the matter, this Criminal Original Petition is allowed and the FIR in Crime No.16 of 2022 as against the petitioner is hereby quashed. Consequently, connected miscellaneous petition is also closed.

20.03.2023

sma

Index: Yes/No

Speaking/Non speaking order



WEB COPY



Crl.O.P.No.5744 of 2023

To:

- 1.The Inspector of Police
Vadapalani Police Station,
Chennai.
- 2.The Public Prosecutor,
High Court of Madras.



WEB COPY



Crl.O.P.No.5744 of 2023

G.CHANDRASEKHARAN, J.
sma

Crl.O.P.No.5744 of 2023
and
Crl.M.P.No.3589 of 2023

20.03.2023