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Crl.O.P.No.6593 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.03.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.6593 of 2023
and
Crl.M.P.Nos.4127 & 4129 of 2023

1.Alagapuram Mohanraj

2.R.Subha

3.R.Devadoss

...

Petitioners

Vs.

1.The State Rep. by
Inspector of Police,
Salem Town Police Station,
(Crime No.145 of 2016)
Salem City.

2.K.R.Rajendran
Co-operative Sub Registrar,
Flying Squad – I,
No.89, Salem North
Assembly Constituency,
Salem – 1.

...

Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the criminal case in C.C.No.61 of 2022 on the file of the learned Judicial Magistrate No.1, Salem and quash the same by allowing this Criminal Original Petition.



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For Petitioner : Mr.N.Manoharan
For Respondents : Mr.R.Babu Muthu Meeran
Additional Public Prosecutor

ORDER

This Criminal Original Petition is filed to call for the records relating to the criminal case in C.C.No.61 of 2022, on the file of the Judicial Magistrate No.1, Salem and quash the same.

2.It is the submission of the learned counsel for the petitioners that petitioners are accused in C.C.No.61 of 2022, registered for the offences under Sections 171- H & 188 IPC. It is the further submission of the learned counsel for the petitioners that there is a bar under Section 195 Cr.P.C. for police to straightaway register the FIR for the offences committed under Section 188 IPC. Section 171-H deals with illegal payments in connection with an election. The complaint allegations and the final report did not make out any allegations with regard to illegal payments in connection with the election. Therefore, he submitted that the further proceedings in C.C.No.61 of 2022 is nothing but an abuse of process of law and harassment against the petitioners.

3.In response, the learned Additional Public Prosecutor submitted that



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petitioners had garlanded the statue of Tvl.C.N.Annadurai and Tvl.EVR Periyar at about 10.10 a.m. on 22.04.2016 without any prior permission. He further submitted that final report is filed and the case has ripened for trial. Thus, he prayed for dismissal of the petition.

4.Considered the rival submissions and perused the records.

5.The gist of the final report reads as follows:

When there was election code of conduct in force, at about 10.10a.m. On 22.04.2016, the accused in C.C.No.61 of 2022 had assembled along with their men, garlanded the statue of Tvl.C.N.Annadurai and Tvl.EVR Periyar without any prior permission and thus, they are liable to be punished under Sections 171-H and 188 IPC.

6.With regard to prosecution of accused for committing the offence under Section 188 IPC, this Court had already passed an order in ***[Jeevanandham and others Vs.The Inspector of Police Velayuthampalayam Police Station, Karur District]*** dated 20.09.2018, reported in ***2018 2 LW (Crl) 606***, as to how the offences under Section 188 IPC has to be dealt with. The relevant portion



of the order reads 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.

7.As per this order, a police officer cannot register FIR for any of the offences falling under Sections 172 to 188 IPC, 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.

8.Therefore, it is obvious that FIR was registered contrary to the mandate required under Section 195 Cr.P.C. and thus, filing of the final report against the petitioners under Section 188 IPC is illegal and therefore, liable to be quashed.



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9. Coming to Section 171-H IPC, this section deals with illegal payments in connection with an election. Section 171 – H IPC reads as follows:

171H. Illegal payments in connection with an election —

Whoever without the general or special authority in writing of a candidate incurs or authorises expenses on account of the holding of any public meeting, or upon any advertisement, circular or publication, or in any other way whatsoever for the purpose of promoting or procuring the election of such candidate, shall be punished with fine which may extend to five hundred rupees:

Provided that if any person having incurred any such expenses not exceeding the amount of ten rupees without authority obtains within ten days from the date on which such expenses were incurred the approval in writing of the candidate, he shall be deemed to have incurred such expenses with the authority of the candidate.

There is not even one single allegation that illegal payments had been made in connection with the election. The only allegation is that petitioners had garlanded the statue of Tvl.C.N.Annadurai and Tvl.EVR Periyar without prior



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permission. Therefore, none of the ingredients required for prosecuting under Section 171-H is made out against the petitioners and thus, no prosecution can be proceeded against the petitioners under Section 171-H also. Thus, this Court finds that prosecution of the petitioners under Sections 171 - H & 188 IPC without any factual or legal material is nothing but an abuse of process of law and harassment to the petitioners.

10.In this view of the matter, this Criminal Original Petition is allowed and the proceedings against the petitioners in C.C.No.61 of 2022, on the file of the learned Judicial Magistrate No.1, Salem is quashed. Consequently, connected miscellaneous petitions are also closed.

23.03.2023

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Internet:Yes

Index:Yes/No

Speaking/Non speaking order



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To:

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- 1.The Judicial Magistrate No.1,
Salem.
- 2.The Inspector of Police,
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Salem City.
- 3.The Public Prosecutor,
High Court of Madras.



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