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Crl.O.P.No.12269 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.06.2023

CORAM:

THE HONOURABLE MR. JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.12269 of 2023

1.Fahatulla

2.Mohamed Rifai

...Petitioners

Vs.

1.The Inspector of Police,
Srimushnam Police Station,
Cuddalore District.
Crime No.1133 of 2020

2.D.Vaithiyanathan

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records relating to the F.I.R. in Crime No.1133 of 2020 on the file of the respondent and quash the same.

For Petitioners : Mr.T.Muruganantham

For R-1 : Mr.Leonard Arul Joseph Selvam
Government Advocate (Criminal side)



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ORDER

This Criminal Original Petition is filed to call for the records relating to the First Information Report in Crime No.1133 of 2020 on the file of the 1st respondent and quash the same.

2. The learned counsel for the petitioners submitted that, the allegations in the First Information Report are that, on 01.11.2020 at about 10.55 a.m to 11.00 a.m., near Anna Statue, Srimushnam, the accused in this case Fahatulla, Mohamed Rifai and 8 other persons without obtaining prior permission formed an unlawful assembly. Petitioners and their party members had conducted protest against the Government. Their protest was peaceful. It is the submission of the learned counsel for the petitioners that First Information Report allegations do not make out the offence under Section 269 of IPC against the petitioners that, they unlawfully or negligently does any act which is, and which they knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life. Therefore, this petition is filed for quashing. Therefore, the First Information Report in Crime No.1133 of 2020 was filed under Sections 143, 188 and 269 I.P.C.



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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 therein 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 petitioners relied upon a Judgment in ***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 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



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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. The learned Government Advocate (Criminal side) opposed this petition on the ground that, petitioners were requested to stop the protest, but they continued their protest on behalf of their political party and raised slogans against the Government, thereby causing spread of Covid-19. Therefore, First Information Report in Crime No.1133 of 2020 was registered.



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Thus, he prayed for dismissal of this petition.

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

7. This Court in Crl.O.P.No.23022 of 2022, while dealing with quashing of case registered under Section 143 & 341 IPC observed that, 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.-

8. Section 143 of IPC reads as follows:

“143. Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six month, or with fine, or with both.”

In the case before hand, there is no specific allegations against the petitioners or any of the member of the unlawful assembly that they used criminal force with a common object of overawe the Central or State



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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. Therefore, this Court is of the considered view that the ingredients for prosecuting the petitioners under Section 143 is not made out and the continuation of investigation would be a harassment to the petitioners.

9. Section 188 of IPC 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 cause obstruction, annoyance or injury, or risk*



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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.

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 IPC and to investigate the same without informing about the commission of offence under Section 188 IPC to the public servants concerned/authorities to enable such public servants to give complaint in writing before the learned Jurisdictional Magistrate who shall take cognizance of the complaint, on being *prima facie* satisfied with the requirements of Section 188 IPC. No such procedure has been followed in this case. In such circumstances, the respondent has no right to register the case



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and to investigate the matter.

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10. Section 269 of IPC reads as follows:

“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.”

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 petitioners violating the prohibition order, there is no other material produced to show that the petitioners 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.



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11. In the absence of any material in support of the allegations that petitioners were responsible for spreading the infectious disease which is dangerous to life, this Court is of the considered view that, petitioners 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.

12. In conclusion, for the reasons stated above, this Court finds that petitioners cannot be prosecuted for the offences under Sections 143, 188 and 269 of I.P.C.

13. In this view of the matter, this Criminal Original Petition is allowed and First Information Report in Crime No.1133 of 2020 pending on the file of the 1st respondent against the petitioners is quashed.

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Index :Yes/No
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To:

- 1.The Inspector of Police,
Srimushnam Police Station,
Cuddalore District.
- 2.The Public Prosecutor,
High Court of Madras.



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G.CHANDRASEKHARAN, J.
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