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Crl.O.P.No.23606 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.03.2023

CORAM:

THE HON'BLE MR.JUSTICE **SUNDER MOHAN**

Crl.O.P.No.23606 of 2019 and
Crl.M.P.No.12443 of 2019

- 1.Reka
- 2.S.Saravanan
- 3.Mathiyazhagan
- 4.Sakthivel
- 5.Joseph Christian
- 6.Venkatachalam
- 7.Nagappan
- 8.Pandayaraj

... Petitioners

Vs.

- 1.State Represented by
The Sub Inspector of Police,
Nallur Police Station,
Namakkal District.

2. R.Nainar

... Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the records and quash the proceedings in S.T.C. No.20 of 2019 pending on the file of Judicial Magistrate, Paramathi against the petitioners.

For Petitioners : Mr.L.Sharath Kumar

For Respondents : Mr.A.Damodaran,
Addl. Public Prosecutor for R1

No appearance for R2



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ORDER

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The petitioners seek to quash the final report filed under Sections 143, 285 and 188 of IPC against them.

2. The allegations against the petitioners is that on 06.04.2016 at about 8.25 p.m., near Kandhampalayam bus stop, they assembled and raised slogans against the former Chief Minister, Mr. M. Karunanidhi and another leader Mr.V. Gopalsamy and caused nuisance to the people. It is also alleged that they have burnt the effigy of Mr.V. Gopalsamy. On reading of the charge sheet, this Court finds that the respondent police have no jurisdiction to investigate and file final report for the offence under Section 188 IPC. Section 195(1)(a)(i) of Cr.P.C. reads as under:

“ Section 195(1) in The Code Of Criminal Procedure, 1973

(1) No Court shall take cognizance-

- (a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or
- (ii) of any abetment of, or attempt to commit, such offence, or
- (iii) of any criminal conspiracy to commit such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;”



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This issue is covered by the judgment of of this Court in *Jeevanandham and another v. State, Karur District (2018 2 LW crl 606)*, wherein this Court quashed the final report for the offence under Section 188 Cr.P.C. and the other allied offences on the ground that the police have no jurisdiction to register the FIR and file a final report, for the offence under Section 188 IPC.

3. As regards the other offence under Section 143, this Court finds that mere assembly of persons to protest cannot be called an unlawful assembly. The assembly of persons in this case, admittedly, was only to express dissatisfaction with the government. There is nothing in the impugned charge to suggest that the petitioners formed an unlawful assembly and hence, Section 143 of IPC is also not made out. In fact, this is also covered by the very same judgment in **Jeevanandham case**, wherein this Court had quashed prosecution launched against similarly placed persons who expressed dissatisfaction with the government.

4. As regards the offence under Section 285 of IPC, this Courts finds that there is nothing in the impugned charge sheet to suggest that the petitioners had acted negligently or rashly so as to endanger human life. One



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cannot infer that the petitioner acted rashly or negligently merely because they had burnt an effigy. The essential ingredients of the offence under Section 285 IPC is not found in the charge sheet.

5. For the above reasons, the impugned proceedings in S.T.C.No.20 of 2019 is quashed. Hence, this Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

07.03.2023

Index: Yes/No

Speaking / Non Speaking Order

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To

1.The Judicial Magistrate, Paramathi

2.The Sub Inspector of Police,
Nallur Police Station,
Namakkal District.

3.The Public Prosecutor,
High Court, Madras.

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SUNDER MOHAN, J

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