



Crl.O.P.(MD)No.2067 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.02.2023

Delivered on : 26.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.2067 of 2023

Syed Ibrahim

... Petitioner/
First Accused

VS.

1.The State represented by
The Inspector of Police,
Jaihindpuram Police Station,
Jaihindpuram,
Madurai District.
(Crime No.502 of 2020)

...Respondent No.1/
Complainant

2.Arumugam
Sub Inspector of Police,
Jaihindpuram Police Station,
Jaihindpuram,
Madurai District.

...Respondent No.2/
Defacto
Complainant

PRAYER : Criminal Original Petition filed under Section 482 Cr.P.C, to
call for the entire relevant records connected to the First Information



Report in Crime No.502 of 2020 dated 17.04.2020 pending on the file of the first respondent police station and quash the same as illegal as against the petitioner.

For Petitioner : Mr.M.Bazeerdeen

For R1 : Mr.M.Muthumanikkam
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records relating to the case in Crime No.502 of 2020 on the file of the first respondent police and quash the same as against the petitioner herein.

2. The petitioner is an accused in the case registered in Crime No. 502 of 2020 on the file of Jaihindpuram Police Station, Madurai District.

3. The case of the prosecution is that the Sub Inspector of Police attached to Jaihindpuram Police Station, on receipt of information that public had assembled in the house of the petitioner/first accused, had visited the house of the petitioner and found 20 persons under the leadership of the petitioner had assembled in his house in violation of the order passed under Section 144 Cr.P.C. by the Government and without



following social distancing and by violating corona norms had conducted prayers and that therefore, FIR came to be registered in Crime No.502 of 2020 on 17.04.2020 for the offences under Sections 143, 269, 270 and 188 IPC r/w Section 3 of Epidemic Disease Act against 20 persons including the petitioner herein.

4. The learned counsel appearing for the petitioner would contend that the petitioner and his family members assembled only for worship and the petitioner did not retain any persons, that the petitioner is not a Covid-19 affected person and as such, he cannot spread Covid-19 to other persons, that no untoward incident was happened and that the Government of Tamil Nadu has already announced that all the cases registered relating to Covid-19 restrictions would be closed. He would further contend that the offence under Section 143 IPC attracts the maximum punishment of one year, that though the FIR came to be registered on 17.04.2020, charge sheet has not been filed so far, that the petitioner has filed copy application before the jurisdictional Court seeking copies of FIR, charge sheet and 161 statements and the same was returned that FIR itself was not received by the Court and that therefore FIR itself is hit by Section 468(2) Cr.P.C.



5. The learned counsel appearing for the petitioner would contend that there is a clear bar for taking cognizance of an offence under Section 188 IPC, without a complaint, as contemplated under Section 195 Cr.P.C.

6. At this juncture, it is necessary to refer the judgment of the Honourable Supreme Court in ***C. Muniappan & Ors Vs. State Of Tamil Nadu*** in ***CRIMINAL APPEAL Nos. 127-130 of 2008***, dated 30.08.2010 and the relevant passages are extracted hereunder:

“20. Section 195(a)(i) Cr.PC bars the court from taking cognizance of any offence punishable under Section 188 IPC or abetment or attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order. The object of this provision is to provide for a particular procedure in a case of contempt of the lawful authority of the public servant. The court lacks competence to take cognizance in certain types of offences enumerated therein. The legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill-will or frivolity of disposition and to save the time of the criminal courts being wasted by endless prosecutions. This provision has been carved out as an exception to the general rule contained under Section 190 Cr.PC that any person can set the law in motion by making a



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complaint, as it prohibits the court from taking cognizance of certain offences until and unless a complaint has been made by some particular authority or person. Other provisions in the Cr.PC like sections 196 and 198 do not lay down any rule of procedure, rather, they only create a bar that unless some requirements are complied with, the court shall not take cognizance of an offence described in those Sections. (vide Govind Mehta v. The State of Bihar, AIR 1971 SC 1708; Patel Laljibhai Somabhai v. The State of Gujarat, AIR 1971 SC 1935; Surjit Singh & Ors. v. Balbir Singh, (1996) 3 SCC 533; State of Punjab v. Raj Singh & Anr., (1998) 2 SCC 391; K. Vengadachalam v. K.C. Palanisamy & Ors., (2005) 7 SCC 352; and Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr., AIR 2005 SC 2119).

27. Undoubtedly, the law does not permit taking cognizance of any offence under Section 188 IPC, unless there is a complaint in writing by the competent Public Servant. In the instant case, no such complaint had ever been filed. In such an eventuality and taking into account the settled legal principles in this regard, we are of the view that it was not permissible for the trial Court to frame a charge under Section 188 IPC.”

7. It is pertinent to note that Section 195 Cr.P.C., bars taking cognizance of any offence punishable under Sections 172 to 188 IPC,



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except on a complaint in writing given by the public servant concerned or some other public servant to whom he is administratively subordinate. A learned Single Judge of this Court in ***Jeevanandham and Others vs State, represented by the Inspector of Police***, reported in ***2018(2) LW (Crl.) 606***, after surveying the judgments of the Honourable Apex Court and of this Court, has held that the Police Officer cannot register a First Information Report, for an offence under Section 188 IPC, and the Judicial Magistrate cannot take cognizance of the offence, based on the final report filed under Section 173 Cr.P.C.

8. Considering the above, the position of law is well settled that there must be a complaint by a public servant who is lawfully empowered under Section 195 Cr.P.C., and it is mandatory and that therefore, the non-compliance of the same, will make the proceedings *void ab initio* and as such, the final report filed for the offence under Section 188 IPC, has to be quashed.

9. Regarding the offence under Section 143 IPC, it is necessary to refer the following passage in ***Jeevanandham's case***, above referred,

“32.....

2. In all the cases, the assembly of persons were



expressing dissatisfaction on the governance and claiming for minimum rights that are guaranteed to an ordinary citizen. If such an assembly of persons are to be trifled by registering an FIR under Section 143 of IPC and filing a Final Report for the very same offence, no democratic dissent can ever be shown by the citizens and such prohibition will amount to violation of fundamental rights guaranteed under the Constitution.”

10. As rightly held in ***Jeevanandham's case***, the violation of Section 30(2) of the Police Act will not constitute an offence under Section 143 IPC, as an order passed under Section 30(2) of the Police Act is only regulatory in nature, by which, the police cannot prohibit any agitations.

11. In the case on hand, admittedly, it is not the case of the prosecution that some untoward incident had happened on that day. As rightly contended by the learned counsel appearing for the petitioners, the prosecution does not even state as to how the worship conducted by the petitioner and the other accused is unlawful and as such, this Court has no hesitation to hold that the case of the prosecution does not satisfy the requirements of the Section 143 IPC.



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12. Now turning to the offences under Sections 269, 270 IPC and Section 3 of Epidemic Disease Act, the offence under Section 269 IPC pertains to a negligent act likely to spread infection of disease dangerous to life and whereas Section 270 IPC pertains to a malignant act likely to spread infection of disease dangerous to life. A Division Bench of Bombay High Court in ***HLA SHWE and others Vs. State of Maharashtra*** has held that the person sought to be prosecuted under Sections 269 and 270 IPC must commit an act with a knowledge that he is likely to spread infection of any disease. Moreover, Section 270 IPC is the aggravated form of Section 269 IPC and the term of 'malignant' (malicious) used in Section 270 evinces the presence of *mens rea* of the accused who intentionally acted in a wrongful way to spread the disease.

13. In the case on hand, it is not the case of the prosecution that the petitioner was affected by infectious diseases. As rightly contended by the learned counsel appearing for the petitioner, merely because the petitioner was allegedly not wearing the masks and were not maintaining the social distancing that could not lead to prosecuting for the offences under Sections 269 and 270 IPC. It is pertinent to note that there is absolutely no material on record to prove that the petitioner had indulged



in any act which was likely to spread the infection of Covid-19. Hence, this Court has no other option, but to hold that the prosecution has miserably failed to shown the existence of ingredients which attract the offences under Sections 269 and 270 IPC and Section 3 of Epidemic Disease Act.

14. Now turning to the plea of limitation, as already pointed out, admittedly, FIR came to be registered on 17.04.2020. It is not the case of the prosecution that charge sheet has already been filed before the jurisdictional Court. It is evident from the Return endorsement of copy application filed by the petitioner before the jurisdictional Court for getting certified copies of FIR, charge sheet and 161 statements that FIR itself has not been received by the jurisdictional Court. But, it is pertinent to note that Section 270 IPC attracts the punishment of imprisonment for a term which may extend to two years or with fine or with both. As per Section 468 Cr.P.C., when the minimum sentence of the offence is one year and the maximum is three years then the period of limitation will be three years. In the case on hand, as already pointed out, since the FIR was registered on 17.04.2020, three years period was not expired when the case was reserved for orders. Hence, the contention of the learned counsel appearing for the petitioner that FIR is hit by Section 468 Cr.P.C.



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cannot be accepted. But, at the same time, considering the other aspects referred earlier, this Court has no hesitation to hold that the impugned FIR in Crime No.502 of 2020 on the file of the first respondent police is liable to be quashed.

15. In the result, this Criminal Original Petition stands allowed and the impugned FIR in Crime No.502 of 2020 pending on the file of the first respondent is hereby quashed as against the petitioner.

26.04.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

- 1.The Inspector of Police,
Jaihindpuram Police Station,
Jaihindpuram,
Madurai District.
- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR, J.

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Pre-delivery order made in
Crl.O.P.(MD)No.2067 of 2023

Dated : 26.04.2023