



**CRL.O.P.(MD)No.2579 of 2021**

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**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 21.04.2023**

**CORAM:**

**THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN**

**CRL.O.P.(MD)No.2579 of 2021**

**and**

**CRL.M.P.(MD)No.1355 of 2021**

S.Rajadurai

... Petitioner / Accused No.1

**-Vs-**

1.The State

Represented by Inspector of Police,

Kodaikanal Police Station, Dindigul District.

(Crime No.93 of 2017)

... 1<sup>st</sup> Respondent / Complainant

2.A.Pandi,

The Special Sub Inspector of Police,

Kodaikanal Police Station,

Dindigul District.

... 2<sup>nd</sup> Respondent / Defacto Complainant

**PRAYER:** Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, praying this Court to call for records relating to the FIR in Crime No.93 of 2017 on the file of the first respondent police and quash the same as against this petitioner.

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For Petitioner : No appearance  
For R1 : Mr.M.Muthumanikkam  
Government Advocate (Crl.Side)

### **ORDER**

This Criminal Original Petition has been filed by the Accused No.1 to quash the FIR in Crime No.93 of 2017 on the file of the 1<sup>st</sup> respondent police for the offences punishable under Sections 143 and 188 IPC.

2.The case of the prosecution is that on 13.03.2017, at about 12.00 p.m., the petitioner and others unlawfully assembled and condemned against the State, carrying the party flags before the ration shop regarding the malpractice in distribution of the ration products, without getting any prior permission from the concerned authority, when the promulgation order is in force and hence, an FIR has been registered against the petitioner and others for the offences punishable under Sections 143 and 188 IPC.



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3.The learned Government Advocate (Crl.Side) appearing for the respondents would submit that the petitioner, even after the knowledge of promulgation order, unlawfully assembled and condemned against the State. Further, in this case after investigation, Investigation Agency filed the final report and the same was not taken on file. Therefore, he sought for dismissal of the quash petition.

4.At this juncture, the learned counsel for the petitioner placed reliance on the decision of the Hon'ble Supreme Court in **2018 (15) SCC 273 (Joseph Salvaraj Vs. State of Gujarat)** and submitted that this Court is duty bound to consider the entire final report and find out whether any offence is made out against the petitioner. He further submitted that even if the entire material annexed with the final report is taken as truth, no offence is made out against the petitioner and hence, he seeks for quashment of the impugned FIR as well as the final report filed against the petitioner.

5.Heard the learned counsel on either side and perused the materials available on record as well as the final report carefully.



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6.The only question for consideration is whether the registration of case under Sections 143 & 188 IPC, on the complaint lodged by the respondent Police is permissible under law or not. In this regard it is relevant to extract Section 195(1)(a) of the Criminal Procedure Code, 1973 :-

*“195.Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence. (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, 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;...”*

7.In view of the above, it is very clear that for taking cognizance of the offence under Section 188 of IPC, the public servant should lodge a complaint in writing, other than that no Court has power to take cognizance.



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8. Admittedly, the de-facto complainant is the Special Sub Inspector of Police, Kodaikanal Police Station, Dindigul District, whereas, the Promulgation Order was passed by the Deputy Superintendent of Police, Kodaikanal and he is the competent person to prefer the private complaint before the jurisdictional Magistrate Court and hence, the registration of FIR is against law.

9. In the above circumstances, the learned counsel for the petitioner rightly relied upon the judgements in *Jeevanandham and Ors. Vs. State and Ors.* reported in **2018 (2) LW (CRL) 606** and *Raja Vs. State and Ors.* reported in **2019 (4) MLJ (CRL) 175**.

10. Apart from that in this case, on perusal of FIR and the materials annexed with the final report, this Court did not find any order of promulgation issued by the Deputy Superintendent of Police, Kodaikanal, which is the material document and hence, also this Court firmly opined that there was no such document was available and hence on this aspect also the petitioners' case deserves to be allowed.



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11.In the result, the Criminal Original Petition stands allowed and the the case in Crime No.93 of 2017 on the file of the 1<sup>st</sup> respondent and the consequential final report filed in Crime No.93 of 2017 are quashed. Consequently connected Miscellaneous Petition is closed.

**21.04.2023**

NCC : Yes / No  
Internet : Yes / No  
Index : Yes / No  
MYR

To:

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



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**K.K.RAMAKRISHNAN, J**

*MYR*

Order made in  
**CRL.O.P.(MD)No.2579 of 2021**

Dated:

**21.04.2023**