



Crl.O.P(MD).No.3279 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.03.2023

CORAM:

THE HONOURABLE MRS. JUSTICE R.THARANI

Crl.O.P(MD).No.3279 of 2021

and

Crl.O.P.(MD)No.1808 of 2021

1.Subbaraj
2.Kannan
3.Muthuraj
4.Bharathirajan
5.Raja
6.Muniyasamy
7.Selva Perumal
8.Bose
9.Sundhara Raj
10.Pethuru Ayyadurai
11.Kumar
12.Saravana Kumar

...Petitioners

Vs

1.State through the Inspector of Police,
Sivakasi East Police Station,
in Crime No.240 of 2017
Virudhunagar District.

2.Subburaj

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying this Court to call for the records in S.T.C.No. 2576 of 2018 on the file of the Court of Judicial Magistrate No.II, Sivakasi, Virudhunagar District and to quash the same.



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For Petitioners
For 1st Respondent

: Mr.R.Rajamohan
: Mr.M.Sakthi Kumar
Government Advocate (Crl. Side)

ORDER

This petition is filed to quash the chargesheet in S.T.C.No.2576 of 2018, on the file of the learned Judicial Magistrate No.II, Sivakasi.

2.The case against the petitioners is that the defacto complainant who was working as a Sub Inspector of Police, lodged a complaint before the first respondent stating that on 13.03.2017 at about 10.45 hours, when the police was on patrol duty, the petitioners and others were conducting demonstration in front of the Fair Price shop, Naranapuram, Sivakasi. Hence, the respondent Police registered a case against the petitioners and others in Crime No.240 of 2017 under Section 143 and 188 of IPC and the chargesheet was taken on file as S.T.C.No.2576 of 2018.

3.On the side of the petitioners, it is stated that the defacto complainant was not the competent person to register the FIR for the offence under Section 188 of IPC and the same is to be quashed. The complaint does not even state as to how the protest of the petitioners and others is unlawful and that it does not satisfy the requirements of Section 143 of IPC and the same is to be quashed. A Police Officer cannot register an FIR for any offence falling under



Section 172 to 188 of IPC and that the role of the Police Officer will be confined only to the preventive action as mentioned in Section 41 of Cr.P.C.

He has to inform the incident to an authorized public servant authorised or to address a complaint in writing before the jurisdictional Magistrate. No Judicial magistrate should take cognizance of a final report when it reflects an offence under Section 172 to 188 of IPC. To substantiate the claim, a judgment of this Court in the case of *Jeevanandham and others v. State* reported in **2018 -2-L.w. (Crl.) 606** is cited.

4.On the side of the respondents, it is stated that the petitioners and their friends raised slogans against the ruling party in front of the Fair Price shop and hence, a case under Sections 143 and 188 of IPC was registered against the petitioners.

5.It is seen that Section 188 of IPC is not cognizable offence and a prior sanction is necessary. However, no such prior sanction was obtained by the police to register the case under Section 188 of IPC.

6.It is seen that except that the petitioners raised slogans, no other allegation was raised against them. Section 143 of IPC is only a punishment Section. Hence, a case under Section 143 of IPC alone is not maintainable.



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R. THARANI,J.

Mrn

7.For the above reasons, it is decided that this is a fit case to be quashed. Hence, this Criminal Original Petition is **closed** and the chargesheet in S.T.C.No.2576 of 2018 is hereby quashed. Consequently, connected miscellaneous petition is closed.

21.03.2023

NCC : Yes/No

Internet : Yes/No

Index : Yes/No

Mrn

To

- 1.The Judicial Magistrate II,
Sivakasi.
- 2.The Inspector of Police,
Sivakasi East Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

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