



CrI.O.P.(MD)No.5621 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.03.2023

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

CrI.O.P.(MD)No.5621 of 2023 and
CrI.M.P(MD).N0.4922 of 2023

1. Mohamed Khan
2. Sadham Hussain
3. Sahul Hameed
4. Ayup @ Ayup Khan
5. Mohammed Rafiq
6. Humayunkabeer
7. Abdul Rahim

...Petitioners/

Accused No.23,38,80,90,93,113,124

Vs.

1. State rep. by
The Inspector of Police,
Courtallam Police Station,
Tenkasi District.
(Crime No.342 of 2021)

...1st Respondent/Complainant

2. M.Kavitha
The Sub Inspector of Police,
Courtallam Police Station,
Tenkasi District.

...2nd Respondent/Defacto Complainant

PRAYER: This Criminal Original Petition has been filed under Section



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482 Cr.P.C., to call for the records pertaining to Crime No.342 of 2021 dated 25.07.2021 on the file of the Inspector of Police, Courtallam Police Station, Tenkasi District and quash the same.

For Petitioners : Mr.D.S.Haroon Rasheed
For Respondent : Mr.B.Nambiselvan
Additional Public Prosecutor

ORDER

This petition is filed seeking quashment of Crime No.342 of 2021 on the file of the first respondent.

2.Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the first respondent.

3.The case of the petitioner is that on 24.07.2021 at about 16.30 hours, the petitioner herein was roaming in the road without wearing mask at the time of prohibition due to COVID-19 pandemic. Hence, a case in Crime No.342 of 2021 for the offences punishable under Sections 143, 188, 283, 269, 270 and 353 IPC r/w. Section 3 of Epidemic Diseases Act, 1897 has been registered. The present petition is filed to quash the First Information Report in Crime No.342 of 2021.



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4.This petition is filed mainly on the ground that Section 188 IPC is non-cognizable offence and the police has no right to register the case and investigate.

5.Heard both sides.

6.In the judgment reported in *2018(2) L.W (Crl.) 606* In *Jeevanandhan and others Vs. State rep. by Inspector of Police, Velayuthampalayam Police Station, Karur District and another*), it has been held that the police has no right to file a case under Section 188 IPC and to investigate the same without getting proper permission from the concerned jurisdictional Magistrate. Here, there is no material to show that before registering the case, permission of the concerned jurisdictional Magistrate has been obtained. In such circumstances, the respondent has no right to register the case and to investigate the matter. A detailed guideline has been issued by this Court in the judgment cited supra. On this aspect, Section 188 IPC will not stand against the petitioner.



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7.Considering the nature of allegations and the offences involved in this case, I am of the considered view that roaming in the road without any reason should not be a reason for spoiling the future of the petitioner. Moreover, the Government is also going to drop all these cases, which have been registered during the pandemic period against the public. Taking all these aspects into account, I am of the considered view that the First Information Report in Crime No.342 of 2021 on the file of the first respondent is liable to be quashed and accordingly, the same is quashed.

8.In the result, this petition is allowed. Consequently, connected miscellaneous petition is closed.

27.03.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
trp



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To

1. The Inspector of Police,
Courtallam Police Station,
Tenkasi District.
2. The Sub Inspector of Police,
Courtallam Police Station,
Tenkasi District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAN,J

trp

Order made in
CrI.O.P.(MD)No.5621 of 2023 and
CrI.M.P(MD).No.4922 of 2023

Dated : 27.03.2023