



Crl.O.P.(MD)No.13412 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **03.08.2023**

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.13412 of 2023

1. Raja Mohammed
2. Mohammed Ali
3. Noormohammed
4. Abdulsalam
5. Mohammed Zakkariya
6. Ibrahim
7. Mydeen
8. Niyas
9. Kadharbava
10. Shajahan
11. Ashardeen
12. Khadar Mydeen
13. Ahmed Mustafa



Crl.O.P.(MD)No.13412 of 2023

14. Akkim

15. Mohamed Yasin

16. Mohamed Haaris

17. Mohamad Farook

18. Abdul Raheem

19. Abdul Razak

... Petitioners

Vs.

1. The Inspector of Police,
Jaihindpuram Police Station,
Jaihindpuram, Madurai District.
Crime No.502/2020.

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

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, 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 1st respondent police station and quash the same as illegal as against the petitioners.

For Petitioner : Mr.M.Bazeerdeen

For Respondent : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



WEB COPY



Crl.O.P.(MD)No.13412 of 2023

ORDER

This Criminal Original Petition is filed seeking quashment of FIR in Crime No.502 of 2020 pending on the file of the first respondent/Inspector of Police, Jaihindpuram Police Station, Madurai District.

2. It is submitted by learned counsel for the petitioners that the *defacto* complainant / Police on account of Covid-19, the Police have promulgated 144 Cr.P.C proceedings prohibiting the gathering of four or more persons in a specified area.

3. According to the Police, that the petitioners were gathered in a house for worshipping despite the fact that a complete lockdown was effected across the State. On account of which, there was every possibility of spreading of corona, and based on a complaint given by the *defacto* complainant/police, a case was registered on 17.04.2020 against the petitioners in Crime No.502 of 2020 for the offences punishable under Sections 143, 269, 270 and 188 of IPC, and has effected arrest of



Crl.O.P.(MD)No.13412 of 2023

the petitioners for violating 144 Section and of course for not wearing mask and violating social distances. The petitioners are arrayed as Accused Nos.2 to 20.

4. It is submitted by learned counsel for the petitioner that on 17.04.2020, the petitioners were gathered in a house only for a limited purpose of worshipping and there is nothing on record to show that the petitioners were found to be infected with Covid-19 virus. He further contended that as per Section 468(b) of Cr.P.C., the first respondent police failed to file report before the concerned Court within one year from the date of registration of FIR, i.e., 17.04.2020 and thereby, there is a bar to take cognizance of the offence after lapse of the period of limitation. The respondent Police have violated the procedure for registration of the crime and therefore, sought for quashing of FIR.

5. Before considering on other aspect alleged by the petitioner, it is to be seen that this offence was conducted during pandemic period. Whatever, directions be passed from time to time by the various authorities, they are aimed at only to maintain norms and guidelines



CrI.O.P.(MD)No.13412 of 2023

issued during the Covid-19 period with the intention to see that Covid-19 is not spread among general people. One of such guidelines was to maintain social distance and cover the nose and mouth with proper masks. But, these orders like promulgation of 144 of Cr.P.C and other similar orders are only preventive measures. In our Indian Culture, more particularly, this part of the Country, people are socially, culturally, religiously and politically very active. Therefore, people should not be found fault for such small violations.

6. This case is registered on 17th April, 2020, is being more than three years four months ago. Still, charge sheet is not filed so far. As the offences alleged against the petitioners are not so serious, the period of three years and four months certainly too long, which is one of the grounds to consider quashment of charge sheet.

7. The petitioner is charged with for the offence under Sections 143, 269, 270 and 188 of I.P.C. Section 188 of C.P.C speaks that the person, who disobey the order promulgated by a public servant can be punished with imprisonment for maximum one month with fine which



Crl.O.P.(MD)No.13412 of 2023

may extend to 200 Rupees. However, as per Section 195 (1) (a) (i) no Court shall take cognizance of the offence in respect of the offence punishable under Sections 170 to 188 of I.P.C., except on a complaint in writing by the public servant, who has promulgated. In the case on hand, the public servant who has promulgated the orders has not made any such complaint before the Police. On the face of it, the Police cannot charge the petitioners under Section 188 of I.P.C.

8. Section 269 of I.P.C speaks about the negligent act which a person knows that his/her act likely to spread the infection of any disease dangers to life thereby punished with imprisonment, which may extend to six months or with fine or both.

9. As per Section 270 of I.P.C., whoever malignantly does an act which he knows that his act likely to spread diseases punished which extended to two years or fine with both. Section 270 of I.P.C is not applicable when Section 269 of I.P.C is applied. Even according to prosecution, the petitioners were negligent and on account of their negligence, there was eminent danger that they may likely to spread the



CrI.O.P.(MD)No.13412 of 2023

infection. Further, in order to consider Section 270 of I.P.C, there shall be a record that the petitioners were suffering from infectious disease or contagious disease. According to the prosecution, if at all the prosecution version is correct, the petitioners must be suffered from Covid-19 disease and on account of their negligence of not maintaining the social distance and not wearing proper mask, they may likely to spread diseases. So, there is no material before the Court that they were suffered from Covid-19. Hence, these two provisions under Sections 269 and 270 will not get attract.

10. Section 143 of I.P.C is a punishment for being an unlawful assembly. Merely because a person is a member of an assembly of more than five persons is no offence unless the assemblies meant to commit such offence as mentioned under 141 of I.P.C. The prosecution version is that the petitioners were negligent, thereby, there was a chance to spread Covid-19.

11. Above all, Section 468 of I.P.C reads as under:

468. Bar to taking cognizance after lapse of the period of limitation.



(1) Except as otherwise provided elsewhere in this Code, no Court, shall take cognizance of an offence of the category specified in sub-section

(2), after the expiry of the period of limitation.

(2) The period of limitation shall be—

(a) six months, if the offence is punishable with fine only;

(b) one year, if the offence is punishable with imprisonment for a term not exceeding one year;

(c) three years, if the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years.

(3) For the purposes of this section, the period of limitation, in relation to offences which may be tried together, shall be determined with reference to the offence which is punishable with the more severe punishment or, as the case may be, the most severe punishment.

12. Considering the above provision, it is to be examined as to whether the prosecution can file charge sheet for the offence against the



Crl.O.P.(MD)No.13412 of 2023

petitioners. The petitioners are charged with offences under Section 143 I.P.C. the punishment for which he is six months. The punishment of 188 of I.P.C is one month. The punishment for 269 I.P.C is six months. The punishment for 270 I.P.C is two years. Therefore, the maximum punishment under any of the above offence is two years. As per Section 468 of I.P.C, the charge sheet should have been filed within three years from the date of occurrence. In case on hand, three years have already been lapsed and the Police have not filed the charge sheet. Therefore, considering from any angle, FIR registered against the petitioners will not sustain and therefore, required to be quashed.

13. Accordingly, this Criminal Original Petition is allowed and the FIR in Crime No.502 of 2020 dated 17.04.2020 is quashed.

03.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
PKN



WEB COPY



Crl.O.P.(MD)No.13412 of 2023

To

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



WEB COPY



Crl.O.P.(MD)No.13412 of 2023

DR.D.NAGARJUN,J

PKN

Crl.O.P.(MD)No.13412 of 2023

Dated: 03.08.2023