



Crl.O.P.(MD) No.13139 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 21.07.2023

CORAM:

THE HONOURABLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD) No.13139 of 2023

and

Crl.M.P.(MD) No.10268 of 2023

Abdulrahman

... Petitioner

Vs.

1.The Inspector of Police,
Karimedu Police Station,
Madurai City,
Crime No.189 of 2019.

2.Joseph Ravichandran

..Respondents

PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to the FIR in Crime No.189 of 2018 pending on the file of the 1st respondent police and quash the same as against the petitioner alone.

For Petitioner : Mr.S.Rajamanickam

For R1 : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor



Crl.O.P.(MD) No.13139 of 2023

WEB COPY

ORDER

This Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure seeking for quashment of FIR in Crime No.189 of 2018 on the file of the respondent No.1 police.

2.The facts in brief are that on 20.03.2018 at about 02.45 pm., the accused person along with others found in unlawful assembly in front of Mathi Theatre, A.A.Road, Madurai and restrained the Rathaiyatra by raising slogans against the Central Government by disturbing the public people transportation, basing on which a case has been registered against the petitioner and others in Crime No. 189 of 2018 for the offence punishable under Sections 143 and 188 IPC. It is submitted by the learned counsel for the petitioner that even if whatever the allegations levelled against the petitioner in the First Information Report are accepted to be correct, no case is made out against the petitioner under Sections 143 and 188 IPC.

3.The learned Additional Public Prosecutor for the respondent No.1 police submits that the police have completed the investigation and the charge sheet has



Crl.O.P.(MD) No.13139 of 2023

WEB COPY

already been filed in the year 2018 itself, but the said charge sheet has not been taken on file so far by the learned Magistrate.

4. Section 188 IPC runs as under:-

“188. Disobedience to order duly promulgated by public servant —

Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which



Crl.O.P.(MD) No.13139 of 2023

WEB COPY

may extend to six months, or with fine which may extend to one thousand rupees, or with both."

5.In order to find a person guilty of offence under Section 188 IPC, there shall be an order promulgated by public servants. Such public servant must be lawfully empowered to promulgate the same and the accused should have violated such orders and thereby caused annoyance or obstruction to any person lawfully employed.

6.In the case on hand, it is not the case of the respondent police that either the defacto complainant or any other police or Executive Magistrate has promulgated any orders and that the petitioner has violated those orders. When no order was promulgated by any public authority, the basic requirement to charge the accused for the offence under Section 188 IPC is missing. Once the basic ingredient of 188 IPC itself is missing, the other ingredients, which depends on the first ingredient, are also not available for the prosecution to charge the accused. Therefore, Section 188 IPC is not attracted.



Crl.O.P.(MD) No.13139 of 2023

WEB COPY

7.Further, Section 195(1)(a)(i) Cr.P.C., mandates that no Court shall take cognizance of the offence under Sections 188 IPC except on the complaint in writing of the public servant concerned. That means, the public servant, who has promulgated the orders, alone is competent to decide as to whether any of his orders promulgated by him were violated and he alone shall make a complaint before the police concerned. In the case on hand, the defacto complainant/the Sub Inspector of Police, Karimedu Police Station, Madurai City, by name Joseph Ravichandran, has filed a complaint *suo motu*.

8.The defacto complainant has stated that the petitioner and others without obtaining any permission from the competent authority are proceeding to stage the Dharna raising slogans and disturbing the public people transportation. Therefore, the complaint of the respondent No.2 is not that the petitioner and others have violated the orders, which were already promulgated, but the complaint is that the petitioner and others are staging the Dharna without obtaining permission from the competent authority and disturbing the public people transportation. Therefore, Section 188 IPC will not sustain in the context of the facts of the case.



Crl.O.P.(MD) No.13139 of 2023

WEB COPY

9.The FIR is also registered against the petitioner alleging that he has committed the offence under Section 143 IPC. Section 143 IPC deals with punishment for being a member of the unlawful assembly. There is no record before the Court *prima facie* to show that the petitioner and others have formed into unlawful assembly as defined under Section 141 IPC. Section 141 IPC defines that if 5 or more than 5 persons got together for committing any one of the acts mentioned from 1st to 5th therein, they can be termed as a member of the unlawful assembly. In the case on hand, even if the contents of the FIR are accepted to be correct, the petitioner has raised slogans and has disturbed the public, it is not alleged that the petitioner has used any criminal force, resisted any execution or criminally trespassed or has compelled any person to do, which he is not supposed to do etc., Therefore, as long as there is no allegation that the petitioner has committed anything as mentioned under Section 141 IPC, it cannot be termed that the petitioner is a member of the unlawful assembly. Consequently, the petitioner cannot be charged with for the offence under Section 143 IPC.



Crl.O.P.(MD) No.13139 of 2023

WEB COPY

10.Further, it is also submitted by the learned Additional Public Prosecutor that though the police have filed the charge sheet in the year 2018, still the learned Magistrate has not taken cognizance of the same.

11.Accordingly, this Petition is allowed and the FIR in Crime No.189 of 2018 pending on the file of the respondent No.1 police is hereby quashed. Consequently, connected Miscellaneous Petition is closed.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

21.07.2023

mm

To

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



WEB COPY



Crl.O.P.(MD) No.13139 of 2023

DR.D.NAGARJUN. J.

mm

Crl.O.P.(MD)No.13139 of 2023

21.07.2023