



CRL.O.P.(MD)No.13587 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.07.2023

CORAM

**THE HONOURABLE DR.JUSTICE D.NAGARJUN**

**CRL.O.P.(MD)No.13587 of 2023**

**and**

**CrI.M.P.(MD).no.10620 of 2023**

Ramakrishnan

... Petitioner

Vs

The State  
represented by  
the Sub-Inspector of Police,  
Thirumangalam Town Police Station,  
Madurai District.  
(Crime No.311 of 2020)

.. Respondent / Defacto complainant

**PRAYER:** Criminal Original Petition filed under Section 482 of Cr.P.C, praying, calling for the records in Crime No.311 of 2020 on the file of the Sub Inspector of Police, Thirumangalam Police Station, Madurai District and quash the same as illegal, arbitrary and violation of law as far as the petitioner is concerned.

For Petitioner : Mr.L.Prabhu

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



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## **ORDER**

This Criminal Original Petition is filed seeking quashment of FIR in Crime No.311 of 2020 pending on the file of the Sub Inspector of Police, Thirumangalam Town Police Station, Madurai District.

2. According to FIR, the respondent Police have promulgated 144 Cr.P.C proceedings prohibiting the gathering of four or more persons in a specified area on account of spreading of Covid-19. The petitioner who belonged to a political faction has violated the prohibiting orders issued under Section 144 of Cr.P.C. along with others by protesting the arrest of Mr.J.D.Vijayan. The Police, who are in patrol duty, to regulate the implementation of 144 Cr.P.C. has arrested the petitioner for violating 144 Section and for not wearing mask and also for violating social distancing norms and for violation of the orders, dated March 28, 2021. The petitioner was brought to the Police Station at 11.30 A.M. and registered FIR for the offences under Sections 143, 188, 269 and 270 of I.P.C. read with Section 3 of Epidemic Diseases Act, 1987 read with Sections 135 and 125 of Tamil Nadu Public Health Act, 1939. The petitioner is arrayed as Accused No.72.



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3. It is submitted by learned counsel for the petitioner that he has not committed the offence and that the respondent Police have violated the procedure for registration of the crime and sought for quashing of the FIR.

4. This offence was allegedly committed during pandemic period. The directions passed from time to time by the various authorities are aimed at only to see that Covid-19 is not spread among people from one person to another. One of such guidelines was to maintain social distancing and cover the nose and mouth with proper mask. The orders like promulgation of 144 of Cr.P.C and other similar orders are only preventive measures to see that pandemic is not spread further. In this part of the State, people are socially and politically very active will cause breach of peace in the Society. People will protest for even small issue relating to their political leader. It is alleged that the petitioner and other accused have been protesting the arrest of their leader by name J.D.Vijayan.

5. The case against the petitioner and others was registered on 28<sup>th</sup> March, 2021, which is about two years four months ago still charge sheet is not filed. The FIR is issued under Sections 143, 188, 269 and 270 of I.P.C. Section 188 of I.P.C. reads as under:-



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“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 persons 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 tends 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 may extend to six months, or with fine which may extend to one thousand rupees, or with both.”

As per above provision, a person who willfully disobeys orders promulgated by a public servant and violation can be punished with imprisonment for maximum one month with fine which 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 against the petitioner and others before the Police thereby, even if charge sheet is filed under Section 188 of I.P.C., Court cannot take cognizance.



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6. Section 269 of I.P.C runs as under:-

“Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.”

Above provision speaks that if a person does any act which he knows that his act likely to spread the infection of any disease endangers to life can be punished with imprisonment, which may extend to six months or with fine or both.

7. Section 270 of I.P.C. runs as under:-

“Whoever malignantly does any act which is, and which he knows or has reason the believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”

According to above, whoever malignantly does not act which he knows that his act likely to spread diseases punished which extended to two years or fine with both. According to prosecution, the petitioner was negligent and on account of his negligence, there was eminent danger that he may likely to spread the infection of Covid-19. In order to consider Section 270 of I.P.C, there shall be a record that the petitioner was suffering from infectious disease or contagious



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disease. If at all the prosecution version is correct, the petitioner must be suffered from Covid-19 disease and on account of his negligence of not maintaining the social distance and not keeping the proper mask, he may likely to spread diseases. Since there is no material before the Court, more particularly, medical report that he was suffered from Covid-19, these two provisions under Sections 269 and 270 of I.P.C. will not be attracted to the facts of the case.

8. Section 143 of I.P.C speaks about a punishment for being member of an unlawful assembly. Being a member of an assembly of more than five persons, is no offence, unless such assembly is to commit any of the offences mentioned under 141 of I.P.C. The prosecution version is that the petitioner was negligent, thereby, there was a chance to spread Covid-19. However there are not allegations the accused about to commit any one of the offences mentioned under Section 141 of I.P.C. Thereby there is no material to show that the petitioner has committed the offences under Sections 143 of I.P.C.

9. Above all, as per Section 468 of I.P.C, there is a bar from taking cognizance if the charge sheet is not filed within the time specified therein. Section 468 runs as under:-



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"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."

10. The Hon'ble Supreme Court has laid down the guidelines for exercising of inherent power under Section 482 of Cr.P.C. for quashing the criminal proceeding in the case of *State of Haryana v. Bhajanlal* reported in *1992 SCC (Cri) 426*, which reads as follows:-

"102. In the backdrop of the interpretation of the various relevant provisions of the Code under Chapter XIV and of the principles of law enunciated by this Court in a series of decisions



relating to the exercise of the extraordinary power under Article 226 or the inherent powers under Section 482 of the Code which we have extracted and reproduced above, we give the following categories of cases by way of illustration wherein such power could be exercised either to prevent abuse of the process of any court or otherwise to secure the ends of justice, though it may not be possible to lay down any precise, clearly defined and sufficiently channelised and inflexible guidelines or rigid formulae and to give an exhaustive list of myriad kinds of cases wherein such power should be exercised.

(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is



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sufficient ground for proceeding against the accused.

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(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

11. The petitioner is alleged to have committed offences under Sections 143, 188, 269 and 270 of I.P.C. read with Section 3 of Epidemic Diseases Act, 1987 read with Sections 135 and 125 of Tamil Nadu Public Health Act, 1939. The punishment for Section 143 is six months, the punishment for the offence 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 and the punishment for Section 3 of Epidemic Diseases Act is six months, the punishment for Section 134 of I.P.C. is seven years and the punishment for Section 135 of I.P.C. is two years. Therefore, the maximum punishment for any of the above offence is two years, thereby as per Section 468 of I.P.C, the



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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 petitioner will not sustain and therefore, accordingly, quashed.

12. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected miscellaneous petition is closed.

**31.07.2023**

NCC:yes/no  
Index:yes/no  
Internet:yes/no  
tsg/pkn



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To

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



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**DR.D.NAGARJUN, J.**

tsg

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