



Crl.O.P.(MD)No.14720 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.08.2023**

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.14720 of 2023
and Crl.M.P(MD).No.11616 of 2023

Ganesan

... Petitioner

Vs.

1. The Inspector of Police,
Rajapalayam South Police Station,
Virudhunagar District.
Crime No.61 of 2018

2.K.Viji,
The Sub-Inspector of Police,
Rajapalayam South Police Station,
Virudhunagar District.

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to the impugned FIR in Crime No.61 of 2018 under Sections 143 and 188 of IPC on the file of the first respondent and quash the same as illegal.

For Petitioner : Mr.D.Balamurugapandi

For Respondents : Mr.S.S.Madhavan
Government Advocate (Crl.side)



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ORDER

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This Criminal Original Petition is filed seeking quashment of FIR in Crime No.61 of 2018 pending on the file of the first respondent/Inspector of Police, Rajapalayam South Police Station, Virudhunagar District.

2. According to the learned counsel appearing for the petitioner, on 25.01.2018, the petitioner and others have staged Dharna and raised a slogan against the Central Government for implementing welfare schemes to the people, due to which, a complaint has been given by the defacto complainant/police and a case was registered on 25.01.2018 against the petitioner in Crime No.61 of 2018 for the offences punishable under Sections 143 and 188 of IPC. The petitioner is arrayed as Accused No.35. 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., 25.01.2018 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



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for suitable directions.

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3. This case is registered on 25th January, 2018, which is being more than five years eight months. Still, charge sheet is not filed so far. As the offences alleged against the petitioner are not so serious, the period of five years eight months is certainly too long, which is one of the grounds to consider quashment of F.I.R on account of delay in investigation.

4. The petitioner alleged to have committed the offence under Sections 143 and 188 of I.P.C. Section 188 of I.P.C speaks that the person, who disobeys the order promulgated by a public servant 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) I.P.C, 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



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charge the petitioner under Section 188 of I.P.C.

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5. 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, he/she cannot be termed as member of unlawful assembly unless the assembly is meant to commit offence as mentioned under 141 of I.P.C.

6. Above all, Section 468 of Cr.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;



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(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.

7. Considering the above provision, it is to be examined as to whether the prosecution can file charge sheet for the offence against the petitioner. The petitioner is charged with offences under Section 143 I.P.C. the punishment for which is six months. The punishment of 188 I.P.C is one month. Therefore, the maximum punishment under any of the above offence is six months. As per Section 468 Cr.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 petitioner will not sustain and therefore, required to be quashed.



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8. Accordingly, this Criminal Original Petition is allowed and the

FIR in Crime No.61 of 2018 dated 25.01.2018 is quashed.

22.08.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
ssb

To

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Rajapalayam South Police Station,
Virudhunagar District.
Crime No.61 of 2018
- 2.K.Viji,
The Sub-Inspector of Police,
Rajapalayam South Police Station,
Virudhunagar District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN,J

ssb

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Dated: 22.08.2023