



Crl.O.P.(MD) No.15835 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2023

CORAM:

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

Crl.O.P.(MD)No.15835 of 2023

1.M.Gajendran

2.G.Pandurangan

3.S.S.Mathiyazhakan

4.P.Inbarajan

... Petitioners

Vs.

1.The State Rep.through
The Inspector of Police,
Virudhunagar East Police Station,
Virudhunagar District.
Crime No.23 of 2022.

2.P.Ramanan,
Special Tahsildar (Social Protection Project),
In charge for Flying Squad of Election,
Virudhunagar Local Body Election,
Virudhunagar District.

..Respondents



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PRAYER : Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records in Crime No.23 of 2022 dated 09.02.2023 pending on the file of the respondents and quash the same as illegal.

For Petitioners :Mr.R.Santhanam

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

ORDER

This petition is filed seeking quashment of the FIR in Crime No.23 of 2022 dated 09.02.2023 on the file of the respondent No.1 police.

2.The facts, in brief, are that during the Virudhunagar Local Body elections, Virudhunagar District, the respondent No.2 was appointed as incharge of a flying squad by the Election Commission. On 09.02.2022, the respondent No.2 and police persons while making rounds at the time near MGR Statue, opposite to the Petrol Bunk, the State President of BJP came there and addressed the gathering by standing in open Jeep arranged by the petitioners and thereafter went near to the Aruppukotai Bus Stop, Virudhunagar and at the Saraswathi Mahal, at Virudhunagar and participated in the meeting without following rules and



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guidelines promulgated by the State of Tamil Nadu, thereby the respondent No.1 has registered a case in Crime No.23 of 2022 on 09.02.2022 for the offence punishable under Sections 143 and 188 IPC.

3.It is submitted by the learned counsel for the petitioners that even if the allegations of the police are accepted to be correct, no order is made out and the respondent police without verifying the records have roped in all the accused, when the intention of the petitioners is not to commit any offence as alleged.

4.Section 143 IPC defines the punishment for a member of an unlawful assembly, as defined under Section 141 IPC. In order to punish the petitioners as members of the unlawful assembly, the prosecution is expected to place the materials before the Court that the petitioners being the members of more than 5 have indulged in any of the acts or omissions set forth as mentioned in I to V Clause in Section 141 IPC.

5.In the case on hand, it is not the case of the petitioners that the petitioners have assembled there as a part of an unlawful assembly as defined under Section



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141 IPC. Therefore, on denying as there is no allegation that the assemble of the petitioners for committing the offence under 141 IPC and the petitioners cannot be charged for the said offence.

6.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



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

7.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.

8.In the case on hand, the petitioners have allegedly violated the orders promulgate by the Government in respect of smooth conducting of elections. However, copy of the orders passed by the Government issuing prohibitory orders have not been filed before the Court. It is not clear as to which order promulgated by which offence were violated by the petitioner knowing fully well that such order have been promulgated. Even if the petitioners have allegedly committed the offence under Section 188 IPC, there is a bar from taking cognizance for the offence under Section 188 IPC as per Section 195(1)(a)(i) Cr.P.C.,



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9. 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.

10. In the case on hand, the person aggrieved in respect of Section 188 IPC is the person, who has promulgated the orders. The defacto complainant has not mentioned anywhere as to the details of the prohibitory orders passed by the Government. Unless the copy of the prohibitory orders passed are placed before the Court, it is very difficult to appreciate the contention of the prosecution. Once the complaint has not been filed by the Officer, who has issued the orders, the crime number which is registered basing on the complaint cannot be entertained.

11. Section 468 runs as under:-

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



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- (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. On considering the bar for taking cognizance after the lapse of limitation as prescribed under 468 Cr.P.C., it is clear that the charge sheet in respect of 188 IPC should have been filed within one year from the date of offence and in respect of 143 IPC, since the punishment is for a period of 6 months, the charge sheet should have been filed within one year as per Section 468(1)(b). As of now, even after a lapse of 1½ years from the date of alleged



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offence, the charge sheet has not been filed. Therefore, on this ground also, this petition is liable to be allowed.

13.In the result, this Criminal Original Petition is allowed. The FIR in Crime No.23 of 2022 dated 09.02.2023 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

19.09.2023

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To

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The Inspector of Police,
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Crime No.23 of 2022.

2.P.Ramanan,
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In charge for Flying Squad of Election,
Virudhunagar Local Body Election, Virudhunagar District.

3.The Additional Public Prosecutor,

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WEB COPY Madurai Bench of Madras High Court,
Madurai.



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DR.D.NAGARJUN. J.

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