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Crl.O.P.(MD)No.16551 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	22.09.2023
Delivered on	29.09.2023

CORAM

THE HON'BLE DR.JUSTICE D.NAGARJUN

Crl.O.P.(MD)No.16551 of 2023
and Crl.M.P.(MD) No.13170 of 2023

Ganeshkumar

... Petitioner/
Accused No.12

Vs.

1. The Inspector of Police,
Virudhunagar West Police Station,
Virudhunagar District.
(Crime No.71 of 2017)

... Respondent/Complainant

2. Paramaguru
Village Administrative Offier,
1/C, Allampatti Village,
Virudhunagar District.

... 2nd respondent/
defacto complainant

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records pertaining to FIR in Crime No.71 of 2017 on the file of lthe first respondent police and quash the same.

For Petitioner : Mr.R.Rajamohan



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

ORDER

This petition is filed seeking quashment of FIR registered against the petitioner for the offences under Sections 143, 147, 188, 341, 152, 353, 34 of IPC and Section 174(a) of the Railway Act 1989.

2. According to the prosecution, on 20.01.2017 at about 11.45 a.m. while the defacto complainant/Village Administrative Officer along with his assistant were on duty, the petitioner along with 137 members assembled unlawfully near Virudhunagar Railway Junction to protest against PETA and demanding Jallikattu. Based on a complaint lodged by the second respondent/VAO a case has been registered in Crime No.71 of 2017 for the offences under Sections 143, 147, 188, 341, 152, 353, 34 of IPC and Section 174(a) of the Railway Act 1989.

3. It is submitted by learned counsel for the petitioners that the petitioner has arrayed as an Accused No.12 in Crime No.71 of 2017 and that the respondent police cannot register FIR for any offences under



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Sections 172 to 188 of IPC and thereby sought for quashment of the FIR.

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4. Heard both sides and perused the record.

5. Section 188 of IPC runs as under:-

"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. "

6. In order to prove the offence under Section 188 of IPC, the



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prosecution has to prove that the public servant has promulgated prohibitory orders and that the petitioners are knowing information about the promulgation of such prohibitory orders and then intentionally violated the said prohibitory orders only then the charge will sustain. Further, the public servant who has promulgated the prohibitory orders has to make a complaint against the petitioner/accused person.

7. Apart from Section 188 of IPC, the petitioners/accused were charged for offences under Sections 143, 147, 341, 152, 353, 34 of IPC and Section 174(a) of the Railway Act 1989. The punishment for the offence under Section 143 of IPC is imprisonment for a term which may extend to six months; The punishment for the offence under Section 147 of IPC is imprisonment for a term which may extend to two years; the punishment for the offence under Section 341 of IPC is imprisonment for a term which may extend to one month; the punishment for the offence under Section 152 of IPC is imprisonment for a term which may extend to three years; the punishment for the offence under Section 353 of IPC is simple imprisonment for a term which may extend to two years; finally, the punishment for the offence under Section 174(a) of the



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Railway Act, 1989 is imprisonment for a term which may extend to two years. Considering the above period of sentences that can be awarded in case the offences are proved against the petitioners/accused, the maximum sentence that can be awarded is three years for the offence under Section 152 of IPC.

8. Section 468 of Cr.P.C. runs 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



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may be, the most severe punishment.

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9. Considering the above provision, the prosecution should have filed a charge sheet within three years from the date of registration of FIR dated 24.01.2017. However, in the present case, the respondent police failed to file charge sheet even as of today thereby taking cognizance for the offences are barred under Section 468 of Cr.P.C.

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



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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



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basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(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. In view of the above principles laid down by the Hon'ble Apex Court, if the continuation of proceedings are barred by any statute or law, such proceedings required to be quashed. In the case on hand, taking cognizance under all the offences alleged against the petitioners are specifically barred under Section 468(2)(c) of Cr.P.C. Thereby all the charges levelled against the petitioners shall not sustain.

12. In the result, this criminal original petition is allowed and the



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proceedings in Crime No.71 of 2017 on the file of the first respondent police, are hereby quashed. Consequently, the connected miscellaneous petitions are closed.

9.09.2023

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

PKN/mvs.



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To

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



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DR.D.NAGARJUN,J

PKN/mvs.

Pre-delivery order made in
Crl.O.P.(MD)No.16551 of 2023

Dated: 29.09.2023