



*CrI.O.P.(MD)Nos.22479, 22485, 22488, 22493,
22497, 22859 and 22898 of 2022*

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 31.01.2023

Delivered on : 17.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CrI.O.P.(MD)Nos.22479, 22485, 22488, 22493,
22497, 22859 and 22898 of 2022
and
CrI.M.P.(MD)Nos.15880, 15887, 15895, 15899, 15904,
16161 and 16239 of 2022

CrI.O.P.(MD)Nos.22479, 22485, 22488 and 22497 of 2022

- 1.Annamani
- 2.Sankarapandian
- 3.Karthikeyan
- 4.Vellasamy
- 5.Thirumalaiyandi
- 6.Arunachalam Nadar
- 7.Vanniyaraj @ Rajjiyam
- 8.Kathiresan
- 9.Murugan @ Pillayar
- 10.Arumugasamy @ Arumugam



*Crl.O.P.(MD)Nos.22479, 22485, 22488, 22493,
22497, 22859 and 22898 of 2022*

11.Dhanaraj

12.Katturaja

13.Karuppaiah

14.Karuppiah

15.Thangasamy @ Katharimulli

16.Mariappan @ Kambili

17.Mariappan.A.K

18.Annappan

19.Chellapandian

20.Deivendran

21.Rajakannan @ Kannan

... Petitioners/
Accused Nos.1
to 10, 12 to 22

Crl.O.P.(MD)Nos.22493 of 2022

1.Annamani

2.Sankarapandian

3.Karthikeyan

4.Vellasamy

5.Thirumalaiyandi

6.Arunachalam Nadar

7.Vanniyaraj @ Rajjiyam



*Crl.O.P.(MD)Nos.22479, 22485, 22488, 22493,
22497, 22859 and 22898 of 2022*

8.Kathiresan

9.Murugan @ Pillayar

10.Arumugasamy @ Arumugam

11.Dhanaraj

12.Katturaja

13.Karuppaiah

14.Karuppiah

15.Thangasamy @ Katharimulli

16.Mariappan @ Kambili

17.Mariappan.A.K

18.Annappan

19.Chellapandian

20.Deivendran

... Petitioners/
Accused Nos.1
to 10, 12 to 21

Crl.O.P.(MD)Nos.22859 and 22898 of 2022

1.Annamani

2.Vellasamy

3.Sankarapandian

4.Thirumalaiyandi

5.Karuppiah

... Petitioners/
Accused 1 to 5



*Crl.O.P.(MD)Nos.22479, 22485, 22488, 22493,
22497, 22859 and 22898 of 2022*

VS.

WEB COPY

Crl.O.P.(MD)No.22479 and 22497 of 2022

1.The State represented by
The Sub Inspector of Police,
Puliyangudi Police Station,
Tenkasi District.
(Crime Nos.211 and 197 of 2021)

... 1st Respondent/
Complainant

2.Mahendran

... 2nd Respondent/
Defacto
Complainant

Crl.O.P.(MD)No.22485 of 2022

1.The State represented by
The Sub Inspector of Police,
Puliyangudi Police Station,
Tenkasi District.
(Crime No.203 of 2021)

... 1st Respondent/
Complainant

2.Dineshbabu

... 2nd Respondent/
Defacto
Complainant

Crl.O.P.(MD)No.22488 of 2022

1.The State represented by
The Inspector of Police,
Puliyangudi Police Station,
Tenkasi District.
(Crime No.200 of 2021)

... 1st Respondent/
Complainant



WEB COPY



*Crl.O.P.(MD)Nos.22479, 22485, 22488, 22493,
22497, 22859 and 22898 of 2022*

2.Kasiviswanathan

... 2nd Respondent/
Defacto
Complainant

Crl.O.P.(MD)No.22493 of 2022

1.The State represented by
The Sub Inspector of Police,
Puliyangudi Police Station,
Tenkasi District.
(Crime No.213 of 2021)

... 1st Respondent/
Complainant

2.Mahendran

... 2nd Respondent/
Defacto
Complainant

Crl.O.P.(MD)Nos.22859 and 22898 of 2022

1.The State represented by
The Sub Inspector of Police,
Puliyangudi Police Station,
Tenkasi District.
(Crime Nos.205 and 210 of 2021)

... 1st Respondent/
Complainant

2.Eeshwaran

... 2nd Respondent/
Defacto
Complainant

COMMON PRAYER : Criminal Original Petitions filed under Section 482 Cr.P.C, to call for the records and quash the proceedings of the Charge Sheet in C.C.Nos.247, 252, 244, 253, 254, 246 and 245 of 2022



*Crl.O.P.(MD)Nos.22479, 22485, 22488, 22493,
22497, 22859 and 22898 of 2022*

on the file of the Additional District Munsif cum Judicial Magistrate
Court, Sivagiri, Tenkasi District.

(in all the petitions)

For Petitioners : Mr.V.Kathirvelu, Senior Counsel
for Mr.K.Prabhu

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

COMMON ORDER

These Criminal Original Petitions have been filed, invoking
Section 482 Cr.P.C., seeking orders to call for the records pertaining to
the cases in C.C.Nos.247, 252, 244, 253, 254, 246 and 245 of 2022
respectively pending on the file of the Additional District Munsif cum
Judicial Magistrate Court, Sivagiri, Tenkasi District and quash the same.

2. The petitioners in Crl.O.P.(MD)Nos.22479, 22485, 22488 and
22497 of 2022 are the accused 1 to 10 and 12 to 22 in C.C.Nos.247, 252,
244 and 254 of 2022, the petitioners in Crl.O.P.(MD)No.22493 of 2022
are the accused 1 to 10 and 12 to 21 in C.C.No.253 of 2022 and the
petitioners in Crl.O.P.(MD)Nos.22859 and 22898 of 2022 are the accused



*Crl.O.P.(MD)Nos.22479, 22485, 22488, 22493,
22497, 22859 and 22898 of 2022*

1 to 5 in C.C.Nos.246 and 245 of 2022 on the file of the Additional District Munsif cum Judicial Magistrate Court, Sivagiri, Tenkasi District.

3. On the basis of the complaints given by the second respondent/defacto complainant, FIR came to be registered in Crime Nos. 211, 203, 200, 213, 197, 205 and 210 of 2021 on 12.04.2021, 09.04.2021, 08.04.2021, 13.04.2021, 07.04.2021, 10.04.2021 and 11.04.2021 respectively for the alleged offences under Sections 143, 188, 353 and 270 IPC against the petitioners herein.

4. The first respondent, after completing the investigation, has laid the final reports under Section 173 Cr.P.C. against the petitioners for the alleged offences under Sections 143, 188, 353 and 270 IPC and the cases were taken on file in C.C.Nos.247, 252, 244, 253, 254, 246 and 245 of 2022 and the same are pending on the file of the Additional District Munsif cum Judicial Magistrate Court, Sivagiri, Tenkasi District

5. The case of the prosecution in Crl.O.P.(MD)No.22479 of 2022 is that the petitioners' rival group gave a petition before the District Revenue Officer (DRO) and the same was forwarded to the Tahsildar and in the peace committee meeting, there was no agreement between the two



*Crl.O.P.(MD)Nos.22479, 22485, 22488, 22493,
22497, 22859 and 22898 of 2022*

members and hence, the permission for conducting temple festival was refused, that meanwhile, on 12.04.2021 at about 10.00 a.m., the petitioners had assembled unlawfully in Puliyangudi T.N. Pudukudi Hindu Nadar Marriamman Temple and conducted music kachery and pongal function without obtaining any permission from the competent authorities, without wearing masks and without maintaining social distancing, during the corona period and that when the second respondent/defacto complainant had questioned the petitioners and directed them not to proceed with the festival, the petitioners by alleging that the police departments were not necessary for them, restrained and prevented the officials from discharging their duties.

6. The case of the prosecution in Crl.O.P.(MD)No.22485 of 2022 is that the petitioners' rival group gave a petition before the District Revenue Officer (DRO) and the same was forwarded to the Tahsildar and in the peace committee meeting, there was no agreement between the two group members and hence, the permission for conducting temple festival was refused, that meanwhile, on 09.04.2021 at about 20.00 hrs, the petitioners had assembled unlawfully in Puliyangudi T.N. Pudukudi Hindu Nadar Marriamman Temple and conducted drama without obtaining any permission from the competent authorities, without



*Crl.O.P.(MD)Nos.22479, 22485, 22488, 22493,
22497, 22859 and 22898 of 2022*

wearing masks and without maintaining social distancing, during the corona period and that when the second respondent/defacto complainant had questioned the petitioners and directed them not to proceed with the festival, the petitioners by alleging that the police departments were not necessary for them, restrained and prevented the officials from discharging their duties.

7. The case of the prosecution in Crl.O.P.(MD)No.22488 of 2022 is that the petitioners' rival group gave a petition before the Revenue Divisional Officer (RDO) and the same was forwarded to the Tahsildar and in the peace committee meeting, there was no agreement between the two members and hence, the permission for conducting temple festival was refused, that meanwhile, on 08.04.2021 at about 20.00 hrs, the petitioners had assembled unlawfully in Hindu Nadar Higher Secondary School premises and conducted drama without obtaining any permission from the competent authorities, without wearing masks and without maintaining social distancing, during the corona period and that when the second respondent/defacto complainant had questioned the petitioners and directed them not to proceed with the festival, the petitioners by alleging that the police departments were not necessary for them, restrained and prevented the officials from discharging their duties.



*Crl.O.P.(MD)Nos.22479, 22485, 22488, 22493,
22497, 22859 and 22898 of 2022*

8. The case of the prosecution in Crl.O.P.(MD)No.22493 of 2022

is that the petitioners' rival group gave a petition before the District Revenue Officer (DRO) and the same was forwarded to the Tahsildar and in the peace committee meeting, there was no agreement between the two members and hence, the permission for conducting temple festival was refused, that meanwhile, from 12.04.2021 at about 21.00 hrs to 13.04.2021 at about 02.00 hrs, the petitioners had assembled unlawfully in Puliyangudi T.N. Pudukudi Hindu Nadar Marriamman Temple and conducted chariot procession without obtaining any permission from the competent authorities, without wearing masks and without maintaining social distancing, during the corona period and that when the second respondent/defacto complainant had questioned the petitioners and directed them not to proceed with the festival, the petitioners by alleging that the police departments were not necessary for them, restrained and prevented the officials from discharging their duties.

9. The case of the prosecution in Crl.O.P.(MD)No.22497 of 2022

is that the petitioners' rival group gave a petition before the District Revenue Officer (DRO) and the same was forwarded to the Tahsildar and in the peace committee meeting, there was no agreement between the two members and hence, the permission for conducting temple festival was



*Crl.O.P.(MD)Nos.22479, 22485, 22488, 22493,
22497, 22859 and 22898 of 2022*

refused, that meanwhile, on 07.04.2021 at about 20.00 hrs, the petitioners had assembled unlawfully in Puliyangudi T.N. Pudukudi Hindu Nadar Marriamman Temple and conducted music kachery and pongal function without obtaining any permission from the competent authorities, without wearing masks and without maintaining social distancing, during the corona period and that when the second respondent/defacto complainant had questioned the petitioners and directed them not to proceed with the festival, the petitioners by alleging that the police departments were not necessary for them, restrained and prevented the officials from discharging their duties.

10. The case of the prosecution in Crl.O.P.(MD)No.22859 of 2022 is that on 10.04.2021 at about 18.00 hrs to 20.00 hrs, the petitioners had assembled unlawfully in Puliyangudi T.N. Pudukudi Hindu Nadar Marriamman Temple and conducted Mullaipaari function without obtaining any permission from the competent authorities, without wearing masks and without maintaining social distancing, during the corona period and that when the second respondent/defacto complainant had questioned the petitioners and directed them not to proceed with the festival, the petitioners restrained and prevented the officials from discharging their duties.



*Crl.O.P.(MD)Nos.22479, 22485, 22488, 22493,
22497, 22859 and 22898 of 2022*

11. The case of the prosecution in Crl.O.P.(MD)No.22898 of 2022

is that on 11.04.2021 at about 18.00 hrs to 21.30 hrs, the petitioners had assembled unlawfully in Puliyangudi T.N. Pudukudi Hindu Nadar Marriamman Temple and conducted Mullaipaari function without obtaining any permission from the competent authorities, without wearing masks and without maintaining social distancing, during the corona period and that when the second respondent/defacto complainant had questioned the petitioners and directed them not to proceed with the festival, the petitioners restrained and prevented the officials from discharging their duties.

12. The learned Senior Counsel appearing for the petitioners would submit that the second respondent has lodged false complaints with baseless and vague allegations, that the first respondent without any preliminary enquiry and without application of mind mechanically registered the case, that the first respondent without conducting proper investigation has mechanically laid the final reports, that the FIR does not say as to when order has been promulgated, that the petitioners are poor coolie workers and that they have been falsely implicated in the above cases.



13. The learned Senior Counsel appearing for the petitioners would further contend that there is a clear bar for taking cognizance of an offence under Section 188 IPC, without a complaint, as contemplated under Section 195 Cr.P.C.

14. At this juncture, it is necessary to refer the judgment of the Honourable Supreme Court in ***C. Muniappan & Ors Vs. State Of Tamil Nadu*** in ***CRIMINAL APPEAL Nos. 127-130 of 2008***, dated 30.08.2010 and the relevant passages are extracted hereunder:

“20. Section 195(a)(i) Cr.PC bars the court from taking cognizance of any offence punishable under Section 188 IPC or abetment or attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order. The object of this provision is to provide for a particular procedure in a case of contempt of the lawful authority of the public servant. The court lacks competence to take cognizance in certain types of offences enumerated therein. The legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill-will or frivolity of disposition and to save the time of the criminal courts being wasted by endless prosecutions. This provision has been carved out as an



WEB COPY



Crl.O.P.(MD)Nos.22479, 22485, 22488, 22493,
22497, 22859 and 22898 of 2022

exception to the general rule contained under Section 190 Cr.PC that any person can set the law in motion by making a complaint, as it prohibits the court from taking cognizance of certain offences until and unless a complaint has been made by some particular authority or person. Other provisions in the Cr.PC like sections 196 and 198 do not lay down any rule of procedure, rather, they only create a bar that unless some requirements are complied with, the court shall not take cognizance of an offence described in those Sections. (vide Govind Mehta v. The State of Bihar, AIR 1971 SC 1708; Patel Laljibhai Somabhai v. The State of Gujarat, AIR 1971 SC 1935; Surjit Singh & Ors. v. Balbir Singh, (1996) 3 SCC 533; State of Punjab v. Raj Singh & Anr., (1998) 2 SCC 391; K. Vengadachalam v. K.C. Palanisamy & Ors., (2005) 7 SCC 352; and Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr., AIR 2005 SC 2119).

27. Undoubtedly, the law does not permit taking cognizance of any offence under Section 188 IPC, unless there is a complaint in writing by the competent Public Servant. In the instant case, no such complaint had ever been filed. In such an eventuality and taking into account the settled legal principles in this regard, we are of the view that it was not permissible for the trial Court to frame a charge under Section 188 IPC.”



*Crl.O.P.(MD)Nos.22479, 22485, 22488, 22493,
22497, 22859 and 22898 of 2022*

15. It is pertinent to note that Section 195 Cr.P.C, bars taking cognizance of any offence punishable under Sections 172 to 188 IPC, except on a complaint in writing given by the public servant concerned or some other public servant to whom he is administratively subordinate. A learned Single Judge of this Court in ***Jeevanandham and Others vs State, represented by the Inspector of Police***, reported in ***2018(2) LW (Crl.) 606***, after surveying the judgments of the Honourable Apex Court and of this Court, has held that the Police Officer cannot register a First Information Report, for an offence under Section 188 IPC, and the Judicial Magistrate cannot take cognizance of the offence, based on the final report filed under Section 173 Cr.P.C.

16. Considering the above, the position of law is well settled that there must be a complaint by a public servant who is lawfully empowered under Section 195 Cr.P.C., and it is mandatory and that therefore, the non-compliance of the same, will make the proceedings *void ab initio* and as such, the final report filed for the offence under Section 188 IPC, has to be quashed.

17. Now turning to the offence under Section 353 IPC, the Hon'ble Supreme Court in ***Manik Taneja and another Vs. State of Karnataka***



Crl.O.P.(MD)Nos.22479, 22485, 22488, 22493,
22497, 22859 and 22898 of 2022

and another reported in (2015) 7 SCC 423, while considering the quashment of charge sheet has held as follows:-

“A reading of the above provision shows that the essential ingredients of the offence under Section 353 IPC are that the person accused of the offence should have assaulted the public servant or used criminal force with the intention to prevent or deter the public servant from discharging his duty as such public servant. By perusing the materials available on record, it appears that no force was used by the appellants to commit such an offence. There is absolutely nothing on record to show that the appellants either assaulted the respondents or used criminal force to prevent the second respondent from discharging his official duty. Taking the uncontroverted allegations, in our view, that the ingredients of the offence under Section 353 IPC are not made out.”

18. In the case on hand, it is not the specific case of the prosecution that the petitioners have used criminal force, while preventing the Government officials from discharging their duties. As rightly contended by the learned Senior Counsel appearing for the petitioners, there is absolutely no allegation or averment that the petitioners have assaulted the Government or Revenue officials or used



Crl.O.P.(MD)Nos.22479, 22485, 22488, 22493,
22497, 22859 and 22898 of 2022

criminal force with an intention to prevent or deter the officials from discharging their duties. Considering the above, this Court has no hesitation to hold that the ingredients of the offence under Section 353 IPC, are not made out.

19. Now turning to the offence under Section 143 IPC, it is necessary to refer the following passage in ***Jeevanandham's case*** above referred:-

“32.....

2. In all the cases, the assembly of persons were expressing dissatisfaction on the governance and claiming for minimum rights that are guaranteed to an ordinary citizen. If such an assembly of persons are to be trifled by registering an FIR under Section 143 of IPC and filing a Final Report for the very same offence, no democratic dissent can ever be shown by the citizens and such prohibition will amount to violation of fundamental rights guaranteed under the Constitution.”

20. As rightly held in ***Jeevanandham's case***, the violation of Section 30(2) of the Police Act will not constitute an offence under



*Crl.O.P.(MD)Nos.22479, 22485, 22488, 22493,
22497, 22859 and 22898 of 2022*

Section 143 IPC, as an order passed under Section 30(2) of the Police Act is only regulatory in nature, by which, the police cannot prohibit any agitations.

21. The learned Senior Counsel appearing for the petitioners would submit that the petitioners even according to the prosecution assembled in the temple for conducting the pongal festival and as such, the same would not constitute an offence under Section 143 IPC. As rightly contended by the learned Senior Counsel appearing for the petitioners, the prosecution does not state as to how the gathering of the people including the petitioners can be taken as an unlawful assembly or protest and as such, this Court has no hesitation to hold that the case of the prosecution does not satisfy the requirements of Section 143 IPC.

22. Now turning to the offence under Section 270 IPC, the said offence pertains to an act done, which was likely to spread infection of disease dangerous to life. A Division Bench of Bombay High Court in ***HLA SHWE and others Vs. State of Maharashtra*** has held that the person sought to be prosecuted under Sections 269 and 270 IPC must commit an act with a knowledge that he is likely to spread infection of any disease. Moreover, Section 270 IPC is the aggravated form of



*Crl.O.P.(MD)Nos.22479, 22485, 22488, 22493,
22497, 22859 and 22898 of 2022*

Section 269 IPC and the term of 'malicious' used in Section 270 evinces the presence of *mens rea* of the accused who intentionally acted in a wrongful way to spread the disease.

23. In the case on hand, it is not the case of the prosecution that the petitioners were affected by infectious diseases. As rightly contended by the learned Senior Counsel appearing for the petitioners, merely because the petitioners were allegedly not wearing the masks and were not maintaining the social distancing that could not lead to prosecuting for the offence under Section 270 IPC. It is pertinent to note that there is absolutely no material on record to prove that the petitioners had indulged in any act which was likely to spread the infection of Covid-19. Hence, this Court has no other option, but to hold that the prosecution has miserably failed to show the existence of ingredients which attracts the offence under Section 270 IPC.

24. Considering the above, this Court has no hesitation to hold that the impugned proceedings in C.C.Nos.247, 252, 244, 253, 254, 246 and 245 of 2022 pending on the file of the Additional District Munsif cum Judicial Magistrate Court, Sivagiri are liable to be quashed.



*Crl.O.P.(MD)Nos.22479, 22485, 22488, 22493,
22497, 22859 and 22898 of 2022*

25. In the result, these Criminal Original Petitions are allowed and the impugned proceedings in C.C.Nos.247, 252, 244, 253, 254, 246 and 245 of 2022 pending on the file of the Additional District Munsif cum Judicial Magistrate Court, Sivagiri are quashed. Consequently, connected Miscellaneous Petitions are closed.

17.04.2023

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

To

- 1.The Additional District Munsif cum Judicial Magistrate Court,
Sivagiri.
- 2.The Inspector of Police,
Puliyangudi Police Station,
Tenkasi District.
- 3.The Sub Inspector of Police,
Puliyangudi Police Station,
Tenkasi District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



*CrI.O.P.(MD)Nos.22479, 22485, 22488, 22493,
22497, 22859 and 22898 of 2022*



WEB COPY



*Crl.O.P.(MD)Nos.22479, 22485, 22488, 22493,
22497, 22859 and 22898 of 2022*

K.MURALI SHANKAR, J.

csn

Pre-delivery order made in
Crl.O.P.(MD)Nos.22479, 22485, 22488, 22493,
22497, 22859 and 22898 of 2022
and
Crl.M.P.(MD)Nos.15880, 15887, 15895, 15899, 15904,
16161 and 16239 of 2022

Dated : 17.04.2023