



CRL OP. 30492 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **05-12-2024**

CORAM

THE HONOURABLE MR JUSTICE SUNDER MOHAN

CRL OP. 30492 of 2024

B.UTHAMAN
S/O. BALASUBRAMANIYAN, NO.9, PILLAIYAR KOIL SOUTH
STREET, NANNILAM, THIRUVARUR DISTRICT.

PETITIONER(S)

Vs

STATE REP BY
THE INSPECTOR OF POLICE, NANNILAM
POLICE STATION, THIRUVARUR DISTREICT.
CR.NO.106/2017.

RESPONDENT(S)

For Petitioner(s):

R.BASKAR

For Respondent(s):

MR.S.SUGENDRAN
PUBLIC PROSECUTOR



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ORDER

The petition has been filed to quash the First Information Report in Crime No.106 of 2017 on the file of the respondent police.

2. The allegation against the petitioner/A69 is that the petitioner had participated in a protest, along with many others and was prevented by the respondent and a case was registered under Sections 143, 341 and 188 of the IPC.

3. Mr. R. Baskar, the learned counsel for the petitioner/A69, would submit that the respondent police have not conducted any investigation pursuant to the FIR and therefore, no final report has been filed so far. The learned counsel further relied upon the Judgment of this Court in ***Jeevanandham and others vs. State*** reported in ***2018 SCC OnLine Mad 13698 : (2018) 2 LW (Cri) 606*** in support of his submission that the allegations would not constitute any of the offences alleged.



4. Mr. S. Sugendran, the learned Additional Public Prosecutor, appearing for the respondent, on instructions, would submit that the respondent police have not conducted any investigation so far.

5. Admittedly, no investigation has been conducted for nearly seven years. Further the allegations in the FIR would not constitute any of the offences alleged. In order to prosecute an accused for an offence under Section 188 of the IPC, it is mandatory to follow the procedure prescribed under Section 195 of the Cr.P.C., and if the said procedure is not complied with, the prosecution cannot be maintained. This Court in ***Jeevanandham and others vs. State*** (cited supra) has held as follows:

"19. From the above judgments, it is clear that in order to prosecute an accused for an offence punishable under Section 188 of IPC, it is mandatory to follow the procedure prescribed under Section 195 of the Code, else, such action is rendered void ab initio. The object of the provision is to provide for a particular procedure, which gives authority only to the public servant. The legislative intent is to prevent an individual or a group of persons from facing criminal prosecution instituted upon insufficient grounds by



persons actuated by malice, ill will, or frivolity of disposition and to save the time of Criminal Courts from being vexed by endless prosecution. Section 195 of Cr.P.C. is an expansion to the general rule contained under Section 190 of Cr.P.C, wherein, any person can set the law in motion by making a complaint.

"20. Therefore, it is very clear from the above judgments that there must be a complaint by a public servant, who is lawfully empowered, whose lawful order has not been complied with. The provisions of Section 195 of Cr.P.C. are mandatory and non-compliance, with it, will make the entire process void ab initio, being without jurisdiction."

6. As regards the offence under Section 143 of the IPC, this Court in the aforesaid Judgment held as follows:

"35...Therefore, a violation of the so-called promulgation under Section 30(2) of the Police Act will not by itself constitute an offence under Section 143 of the IPC. In this case, the assembly of persons were made to express dissatisfaction of the governance and claiming



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for minimum rights that are guaranteed to an ordinary citizen. If such an assembly of persons are to be trifled by registereing an FIR under Section 143 of the 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."

7. Similarly, the offence under Section 341 of the IPC is not made out. Any form of agitation is likely to cause a hindrance to the general public and that would not amount to wrongful restraint as held by this Court in ***Jeevanandham and others vs. State (cited supra)***.

8. Therefore, this Court is of the view that the impugned FIR is liable to be quashed as none of the offences alleged have been made out on the facts and hence quashed.

9. Accordingly, the Criminal Original Petition stands allowed.

05-12-2024

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SUNDER MOHAN, J

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To
THE INSPECTOR OF POLICE, NANNILAM
POLICE STATION,
THIRUVARUR DISTRICT.

Crl.O.P.No.30492 of 2024



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