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CrI.O.P.(MD) No.1092 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.02.2024

PRONOUNCED ON : 05.03.2024

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CrI.O.P (MD) No.1092 of 2024

and

CrI.M.P.(MD) Nos.727 and 728 of 2024

1.Lara @ Livingston Lara

2.Rajamanickam

3.Sathiyadass

...Petitioners

vs

1.The Inspector of Police,
Uthappanaickanur Police Station,
Madurai District.
Crime No.195 of 2023

2.Madurai Pandi

...Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying, to call for the records pertaining to the case in STC.No.8 of 2024 pending on the file of the learned Judicial Magistrate No.II, Usilampatti, Madurai District and quash the same against the Petitioners.



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For Petitioners : Mr.R.Anand

For R1 : Mr.M.Veeranthiran
Government Advocate (CrI.side)

ORDER

The learned Counsel for the Petitioners submits that the Petitioners in this Petition are arrayed as A1, A4 and A6 in STC.No.8 of 2024 pending on the file of the learned Judicial Magistrate No.II, Usilampatti, Madurai. The first Respondent in this case had registered a case against the Petitioners in Crime No.195 of 2023 for the offence under Sections 143 and 188 IPC.

2.According to the defacto Complainant/the second Respondent on 20.09.2023 by around 06.45 pm, the Petitioners herein along with four others were proceeding on a procession to immerse the Vinayagar idol at Chinnakuruvakudi Kanmai, after the Vinayagar Chathurthi. They were not adhering to the directions of the second Respondent. They were dancing and playing songs in the manner of disturbing others. When they were questioned by the defacto Complainant, the second Respondent, they quarrelled with the Respondent Police. They also made the aforesaid sequences as a bad precedent to the youngsters of such localities. Therefore,



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the first Respondent as Complainant had preferred a complaint, based on which Crime No.195 of 2023 was registered, which was investigated and final report was also laid before the Court of the learned Judicial Magistrate No.II, Usilampatti.

3.It is the further submission of the learned Counsel for the Petitioners that this Court in the order reported in ***2018 2 LW (CrI) 606 [Jeevanandham and others vs. The Inspector of Police Velayuthampalayam Police Station, Karur District] dated 20.09.2018***, had struck down the cases filed by the Police under Section 188 IPC stating that these powers are to be vested with Government Officials having control over the celebration of festivals. Only a private complaint is maintainable. The police does not have the power to register a case under Section 188 IPC. The first Respondent had not obtained prior permission from the learned Judicial Magistrate to register a case under Section 188 IPC.

4.Section 195 Cr.P.C., reads as under:-

“195. Prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating



to documents given in evidence –

(1) No Court shall take cognizance—

(a) (i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code (45 of 1860), or

(ii) of any abetment of, attempt to commit, such offence, or

(iii) of any criminal conspiracy to commit, such offence, except on the complaint in writing of the public servant concerned or of some other public servant to whom he is administratively subordinate;

(b) (i) of any offence punishable under any of the following section of the Indian Penal Code (45 of 1860), namely, sections 193 to 196 (both inclusive), 199, 200, 205 to 211 (both inclusive) and 228, when such offence is alleged to have been committed in, or in relation to, any proceeding in any Court, or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476, of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any Court, or

(iii) of any criminal conspiracy to commit, or attempt to commit, or the abetment of, any offence specified in sub-clause (i) or sub-clause (ii), except on the complaint in writing of that Court, or of some other Court to which that Court is subordinate

(2) Where a complaint has been made by a public servant under clause (a) of sub-section (1) any authority to which he is administratively subordinate may order the withdrawal of the complaint and send a copy of such order to the Court; and upon its receipt by the Court, no further proceedings shall be taken on the



complaint:

Provided that no such withdrawal shall be ordered if the trial in the Court of first instance has been concluded

(3) In clause (b) of sub-section (1), the term "Court" means a Civil, Revenue or Criminal Court, and includes a tribunal constituted by or under a Central, provincial or State Act if declared by that Act to be a Court for the purposes of this section

(4) For the purposes of clause (b) of sub-section (1), a Court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from appealable decrees or sentences of such former Court, or in the case of a civil Court from whose decrees no appeal ordinarily lies, to the principal Court having ordinary original civil jurisdiction within whose local jurisdiction such Civil Court is situate:

Provided that—

(a) where appeals lie to more than one Court, the Appellate Court of inferior jurisdiction shall be the Court to which such Court shall be deemed to be subordinate;

(b) where appeals lie to a civil and also to a Revenue Court, such Court shall be deemed to be subordinate to the civil or Revenue Court according to the nature of the case or proceeding in connection with which the offence is alleged to have been committed.”

5.As per Section 195 Cr.P.C., only a person in Authority, who have control over the law and order or empowers to file a private complaint for the offence under Section 188 IPC. Instead, the Respondent Police had



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themselves being the Complainant to the first Respondent. Therefore, as per Section 195 Cr.P.C., and as per the reported ruling of this in **2018 2 LW (CrI) 606 [Jeevanandham and others vs. The Inspector of Police Velayuthampalayam Police Station, Karur District]** dated 20.09.2018, even if the first Respondent had filed the charge sheet, the Court has to necessarily quash it, as the same is not maintainable.

6.The learned Government Advocate (CrI.side) submits that the investigation had been completed and final report was laid before the jurisdictional Court. Therefore, he seeks to dismiss this Petition.

7.On consideration of the rival submissions and on perusal of the records, the submission made by the learned Counsel for the Petitioners is found justified, in the light of the reported ruling of this Court in **2018 2 LW (CrI) 606 [Jeevanandham and others vs. The Inspector of Police Velayuthampalayam Police Station, Karur District]** dated 20.09.2018.

8.In the light of the above, this Criminal Original Petition is allowed. The Charge Sheet in STC.No.8 of 2024 pending on the file of the learned



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Judicial Magistrate No.II, Usilampatti is hereby quashed. Consequently,
connected Miscellaneous Petitions are closed.

Internet :Yes./No
Index :Yes/No
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05.03.2024

To

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



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SATHI KUMAR SUKUMARA KURUP, J.

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Order made in
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