



Crl.O.P.(MD)No.1599 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 21.02.2024

PRONOUNCED ON : 20.03.2024

CORAM

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

CRL.O.P (MD) No.1599 of 2023

and

Crl.M.P.(MD)No.1386 of 2023

Kabilan

...Petitioner

VS

**1.The Inspector of Police,
Sawyerpuram Police Station,
Sawyerpuram, Thoothukudi District.**

2.Navin Prabhu

...Respondents

**PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C,
praying, to call for the records relating to the FIR in Cr.No.71 of 2021 on
the file of the first Respondent Police and to quash the same.**

**For Petitioner : Mr.N.Pragalathan
For R1 : Mr.M.Veeranthiran
Government Advocate (Crl.side)**



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ORDER

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The learned Counsel for the Petitioner submitted that the Petitioner had filed this Criminal Original Petition seeking to quash the F.I.R in Crime No.71 of 2021, on the file of the Inspector of Police, Sawyerpuram Police Station, Sawyerpuram, Thoothukudi District.

2.The Petitioner is arraigned as first Accused in Crime No.71 of 2021. It is the submission of the learned Counsel for the Petitioner that the *de-facto* Complainant/second Respondent, as in-charge of the Election Flying Squad, Srivaikundam Legislative Constituency, had lodged a complaint during the last Legislative Assembly Election that the Petitioner and two others were disbursing money for the purpose of promoting a candidate. On 05.04.2021, at about 1.30 p.m., the second Respondent went to the occurrence place, ie. Petrol pump, where the Petitioner was working as Manager and seized a sum of Rs.2,77,780/-. After seizure of the same, the second Respondent/*de-facto* Complainant, Member of Election Flying Squad, gave a complaint on 05.30 p.m., before the first Respondent. Based on the complaint, the first Respondent had registered a case in Crime No.71



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of 2021 for the alleged offences punishable under Section 171(H) I.P.C r/w.
Section 171(E) I.P.C.

3.The learned Counsel for the Petitioner relied on a similar order passed by another Bench of this Court in ***CrI.O.P.(MD)No.6114 of 2021 (Karuppasamy and others V. State rep. by the Inspector of Police, Ayakudi Police Station)***, dated 10.08.2021, which was passed quashing the F.I.R in Crime No.141 of 2016 on the file of the Inspector of Police, Ayakudi Police Station, Dindigul District. As per the order passed by the learned Judge of this Court, he had relied on the ruling of the Hon'ble Karnataka High Court in ***Andaneppa and others -vs- State of Karnakata and another in Criminal Petition No.101648 of 2017***, wherein, it was stated that prior to registration of a case, the Police had to obtain proper permission from the learned Judicial Magistrate concerned, which is a mandatory provision and non-compliance of the same will vitiate the entire proceedings.

4.The learned Government Advocate (Criminal Side), on instructions of the Respondent, submitted that in this case, the Magistrate had granted



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permission as per order dated 15.04.2021. Therefore, the said ruling is not applicable to the facts of this case. When the Magistrate had granted permission, the Petitioner cannot seek to quash the F.I.R.

5.On perusal of records, it is found that the Investigation Officer in this case had not obtained prior permission from the learned Judicial Magistrate No.I, Thoothukudi. The offence under Section 171(H) I.P.C r/w. Section 171(E) I.P.C., attracts the punishment of one year only. The cases under those categories are considered as non cognizable offences. As per Section 155 of Cr.P.C., before proceeding with the investigation of non cognizable offence, the Investigation Officer has to obtain prior permission from the learned Judicial Magistrate under whom, he has to file FIR and final report. As per the reported Ruling of the Karnataka High Court in ***Andaneppa and others V. State of Karnakata and another in Criminal Petition No.101648 of 2017***, the case registered under Section 171(H) I.P.C r/w. Section 171(E) I.P.C., cannot be registered by the Police without getting prior permission from the learned Judicial Magistrate concerned. In the absence of not following the mandatory provisions, the case registered under Section 171(H) I.P.C r/w. Section 171(E) I.P.C., is not maintainable.



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Therefore, the submission of the learned Counsel for the Petitioner is accepted. The submission of the learned Government Advocate (Crl.side) that the Investigation Officer had obtained written permission from the learned Judicial Magistrate concerned is found not proper. It has not been obtained.

In the result, the ***Criminal Original Petition*** is allowed. The FIR in Cr.No.71 of 2021 on the file of the first Respondent Police is quashed. Consequently, connected Miscellaneous Petition is closed.

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

20.03.2024

cmr

To

- 1.The Judicial Magistrate No.I, Thoothukudi.
- 2.The Inspector of Police,
Sawyerpuram Police Station,
Sawyerpuram, Thoothukudi District.

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SATHI KUMAR SUKUMARA KURUP, J.

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