



Crl.O.P.(MD)No.12776 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 29.02.2024

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.(MD)No.12776 of 2022
and
Crl.M.P.(MD)No.8089 of 2022

Arul

... Petitioner

Vs.

1.State rep by
The Inspector of Police,
Ganesh Nagar Police Station,
Pudukkottai District.
(Crime No.46 of 2018)

2.Yoga Rethinam,
The Sub Inspector of Police,
Ganesh Nagar Police Station,
Pudukkottai District.

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to FIR in Crime No.46 of 2018 pending on the file of the first respondent Police and quash the same as against the petitioner alone.

For Petitioner : Mr.K.G.Arun Kumar



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For R1

: Mr.S.Manikandan,
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed to quash FIR in Crime No.46 of 2018 pending on the file of the first respondent Police.

2.The case of the prosecution is that the petitioner and other accused, without getting any prior permission, unlawfully assembled at Chinnappa Pooga, Pudukkottai District and tried to conduct protest against Government for the murder of one Abarna. Hence, the second respondent, who is the Sub Inspector of Police attached to the first respondent Police Station, filed a complaint, based on which FIR in Cr.No.46 of 2018 came to be registered for the offences punishable under Sections 143 and 188 IPC. Challenging the same, the present petition has been filed by the petitioner.

3.The issue involved in this case is no longer *res integra* and the same has been decided by this Court in the case of ***Jeevanandham and***



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others Vs. State rep. by the Inspector of Police, Karur District, reported

in ***2018-2-L.W. (Crl.) 606*** in ***Crl.O.P. (MD)No. 1356 of 2018***, dated

20.09.2018, wherein, this Court has held thus:

"25.In view of the discussions, the following guidelines are issued insofar as an offence under Section 188 of IPC, is concerned:

a) A Police Officer cannot register an FIR for any of the offences falling under Section 172 to 188 of IPC.

b) A Police Officer by virtue of the powers conferred under Section 41 of Cr.P.C will have the authority to take action under Section 41 of Cr.P.C., when a cognizable offence under Section 188 IPC is committed in his presence or where such action is required, to prevent such person from committing an offence under Section 188 of IPC.

c) The role of the Police Officer will be confined only to the preventive action as stipulated under Section 41 of Cr.P.C and immediately thereafter, he has to inform about the same to the public servant concerned/authorised, to enable such public servant to give a complaint in writing before the jurisdictional Magistrate,



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who shall take cognizance of such complaint on being prima facie satisfied with the requirements of Section 188 of IPC.

d) In order to attract the provisions of Section 188 of IPC, the written complaint of the public servant concerned should reflect the following ingredients namely;

i) that there must be an order promulgated by the public servant;

ii) that such public servant is lawfully empowered to promulgate it;

iii) that the person with knowledge of such order and being directed by such order to abstain from doing certain act or to take certain order with certain property in his possession and under his management, has disobeyed;
and

iv) that such disobedience causes or tends to cause;

(a) obstruction, annoyance or risk of it to any person lawfully employed; or

(b) danger to human life, health or safety; or

(c) a riot or affray.

(e) The promulgation issued under Section 30(2) of the Police Act, 1861, must satisfy the test of reasonableness and can only be in the nature of



a regulatory power and not a blanket power to trifle any democratic dissent of the citizens by the Police.

(f) The promulgation through which, the order is made known must be by something done openly and in public and private information will not be a promulgation. The order must be notified or published by beat of drum or in a Gazette or published in a newspaper with a wide circulation.

(g) No Judicial Magistrate should take cognizance of a Final Report when it reflects an offence under Section 172 to 188 of IPC. An FIR or a Final Report will not become void ab initio insofar as offences other than Section 172 to 188 of IPC and a Final Report can be taken cognizance by the Magistrate insofar as offences not covered under Section 195(1)(a)(i) of Cr.P.C.

(h) The Director General of Police, Chennai and Inspector General of the various Zones are directed to immediately formulate a process by specifically empowering public servants dealing with for an offence under Section 188 of IPC to ensure that there is no delay in filing a written complaint by the public servants concerned under Section 195(1)(a)(i) of Cr.P.C.



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This Court will now proceed to deal with the independent cases

26.Crl.O.P.(MD).Nos. 11834, 15529, 15644, 15621, 16244, 16208, 16075 of 2018 0 In all these cases, it is seen that a Final Report has been filed for an Offence under Section 188 and 143 of IPC and cognizance has also been taken by the concerned Judicial Magistrates. In view of the above discussion, the cognizance of the Final Report under Section 188 of IPC is liable to be quashed. Insofar as the offence under Section 143 of IPC is concerned, in all the cases, the concerned Police Officer has quoted Section 30(2) of the Police Act, and therefore, has straight away proceeded to register an FIR under Section 143 of IPC. As stated above, a mere violation of the so-called promulgation under Section 30(2) of the Police Act will not make out an offence under Section 143 of IPC by straight away declaring an assembly of persons to be an unlawful assembly. The power under Section 30(2) of the Police Act is merely regulatory in nature. In fact, Section 32 of the Police Act itself provides for a penalty for disobeying an order issued under Section 30(2) of the Police Act with a punishment of a fine not



exceeding 200 rupees. Where as an offence under Section 143 of IPC is punishable with imprisonment for a term which may extend to 6 months. 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 IPC. In all the cases, the assembly of persons were made to express dissatisfaction of the governance and claiming for minimum 41 rights that are guaranteed to a 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.

2. Therefore, the Final Report for an offence under Section 143 of IPC is hereby quashed. Accordingly, all the Criminal Original petitions are allowed, and the Final Report filed in each of the case is hereby quashed.

32.Crl.O.P.(MD)Nos. 12684, 15710 and 15709 of 2018 In all these cases, a Final Report has been filed for an offence under Section 143,



341 and 188 of IPC. A Final Report cannot be filed for an offence under Section 188 of IPC, and the Court below ought not to have been taken cognizance. In view of the above discussion, the 48 Final Report insofar as an offence under Section 188 IPC is concerned is hereby quashed. Insofar as the offence under Section 143 IPC is concerned, the allegation is that the assembly had raised slogans demanding for the rights of the farmers, and expressed opposition not to establish a godown and this according to the Police was done, when there was a prohibitory order under Section 30(2) of the Police Act, 1861. In the considered view of this Court, this will not constitute an offence under Section 143 of IPC.

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. A reading of the Final Report also does not make out an offence under Section 341 of Cr.P.C since any form of an agitation, will necessarily cause some hindrance to the movement of the general public for sometime. That by itself, does not constitute an offence of a wrongful restraint.

3.In the considered view of this Court, the Final Report does not make out an offence of unlawful assembly or wrongful restraint. Accordingly, all the Criminal Original petitions are allowed, and the Final Report filed in each of the case is hereby quashed.

33.Consequently, connected Miscellaneous Petitions are closed.

34.This Court records its appreciation for the effective assistance given by the learned counsel appearing on behalf of the petitioners and also the learned Additional Public Prosecutor appearing for the State, to enable this Court to deal with an offence under Section 188 of IPC and give necessary guidelines with regard to the procedure to be followed.



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4.The decisions squarely applicable to the facts of the present case.

Therefore, following the said decision, this Court is inclined to quash FIR in Crime No.46 of 2018 insofar as the petitioner is concerned.

5.In the result, the Criminal Original Petition is allowed and the FIR in Crime No.46 of 2018 stands quashed insofar as the petitioner is concerned. Consequently, connected miscellaneous petition is closed.

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

- 1.The Inspector of Police,
Ganesh Nagar Police Station,
Pudukkottai District.

- 2.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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M.DHANDAPANI,J.

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