



Crl.O.P.(MD)No.19853 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.11.2024

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THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.19853 of 2024

and

Crl.M.P.(MD)No.12240 of 2024

Karaimurugan

... Petitioner

Vs.

1.State of Tamil Nadu, Rep. by,
The Inspector of Police,
Solavandhan Police Station,
Madurai District.
(Crime No.289 / 2019)

2.Gurupandi

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, praying to call for the records in Crime No.289 of 2019, pending investigation on the file of the first respondent Police and quash the same as against the petitioner herein.

For Petitioner : Mr.P.T.Ramesh Raja

For R1 : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor



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ORDER

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This petition has been filed to call for the records pertaining to the F.I.R. in Crime No.289 of 2019, on the file of the first respondent Police and quash the same.

2. The case of the prosecution is that on 15.09.2019, the second respondent/de-facto complainant, who was working as Village Administrative Officer, received secret information that the accused persons named in the F.I.R. had brought Jallikattu bulls in five Tata Ace vehicles and were attempting to conduct Jallikattu. Subsequently, they were warned, but they ignored the warning and proceeded to conduct the event. Hence, the second respondent lodged a complaint with the first respondent Police, and the same was registered in Crime No.289 of 2019 against 21 persons, including the petitioner (A1), for the offences under Sections 143 and 188 of I.P.C.

3. The learned counsel for the petitioner submitted that the F.I.R. has been registered for the offences under Sections 143 and 188 of I.P.C. on 15.09.2019 and the first respondent Police ought to have filed charge



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sheet within a period of one year as prescribed in Section 468 of Cr.P.C.

However, no charge sheet has been filed so far. The petitioner applied for the copies of the charge sheet on 19.10.2024 before the Judicial Magistrate Court, Vadipatti, and the copy application was returned for the reason that charge sheet was not filed. Hence, the case registered is barred by limitation for taking cognizance by the learned Judicial Magistrate.

4. The learned Additional Public Prosecutor for the State submits that there are specific allegations as against the petitioner to proceed with the case. Further, he would submit that Section 188 of I.P.C. is a cognizable offence and therefore, it is the duty of the Police to register a case. Though there is a bar under Section 195(a)(i) of Cr.P.C. to take cognizance for the offence under Section 188 of I.P.C., it does not mean that the Police cannot register F.I.R. and investigate the case. Hence, he vehemently opposed the quash petition and prayed for dismissal of the petition.



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5. This Court considered the submissions made on either side and perused the materials available on record carefully.

6. Admittedly, the offences levelled against the petitioner are under Sections 143 and 188 of I.P.C. Except the official witness, no one has spoken about the occurrence. It is also seen from the F.I.R. itself that the offences are very simple in nature and trivial.

7. At this juncture, it is relevant to refer here Section 188 I.P.C., which reads as follows:

"188. Disobedience to order duly promulgated by public servant — *Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or trends to cause danger to*



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human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

8. The learned counsel for the petitioner relied upon a judgment in a batch of quash petitions, reported in **2018 (2) L.W. (Crl.) 606** in **Crl.O.P.(MD)No.1356 of 2018**, dated **20.09.2018** in the case of **Jeevanandham and others vs. State rep. by the Inspector of Police, Karur District**, and this Court held in Paragraph-25, as follows :-

"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



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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, 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



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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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9. In the case on hand, the First Information Report has been registered by the respondent Police for the offences under Sections 143 and 188 I.P.C. He is not a competent person to register F.I.R. for the offence under Section 188 of I.P.C. As such, the First Information Report or final report is liable to be quashed for the offence under Section 188 of I.P.C. Further, the complaint does not even state as to how the petitioner and others formed an unlawful assembly and does not satisfy the requirements of Section 143 of I.P.C. Therefore, the F.I.R. cannot be sustained and it is liable to be quashed. Admittedly in these cases, the occurrence took place in a public place, in public view, surprisingly no public or independent witness examined by the prosecution, which causes serious doubt on the veracity of the complaint.

10. Further, this Court in the case of **Jeevanandham and others vs. State Rep. by Inspector of Police and another** reported in **2018 (2) L.W. CrL. 606**, had clearly held that the Police officials are not empowered to register a case under Section 188 I.P.C. and the same is barred under Section 195 Cr.P.C. There is no material to show that there was any promulgation of prohibitory order, which was communicated to



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the public and there was any disobedience by the petitioner. Further, in consequence, the prosecution failed to show whether any trouble occurred. The respondent Police failed to follow the guidelines issued by this Court in **Jeevanandham's case** (cited supra). In several cases, this Court quashed the proceedings against the accused on similar ground.

11. In the result, this Criminal Original Petition is allowed and the F.I.R. registered by the respondent in Crime No.289 of 2019 pending on the file of the first respondent, is hereby quashed as against the petitioner and others, who are similarly placed. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes / No
Index : Yes / No
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18.11.2024

To

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



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M.NIRMAL KUMAR, J.

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Order made in
Crl.O.P.(MD)No.19853 of 2024

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