



Crl.O.P.(MD)No.22687 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.03.2024

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THE HON'BLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.(MD)No.22687 of 2022
and Crl.M.P.(MD)No.16042 of 2022

A.Murugaiyah

... Petitioner

Vs.

1.State Rep.by
The Inspector of Police,
Chathirakkudi Police Station,
Ramanathapuram District.
(In Crime No.143 of 2022)

2.N.Sakthivel,
The Sub Inspector of Police,
Chathirakkudi Police Station,
Ramanathapuram District.

... Respondents

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the FIR in Crime No.143 of 2022 dated 11.09.2022 on the file of the first respondent and quash the same as illegal.

For Petitioner : Mr.D.Senthil

For R1 : Mr.B.Nambiselvan,
Additional Public Prosecutor.



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ORDER

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This Criminal Original Petition has been filed to quash the FIR in Crime No.143 of 2022 dated 11.09.2022 on the file of the first respondent.

2.The case of the prosecution is that on 11.09.2022, the second respondent, who is a Sub Inspector of Police attached to the first respondent Police Station, lodged a complaint stating that Section 144 Cr.P.C., proceedings was initiated in the entire Ramanathapuram District, in view of Anniversary of Immanuvel Sekaran and Muthuramalinga Thevar and at that time, the petitioner without getting any permission, used loud speaker in the village and played songs in high sound and caused disturbance to the general public. Based on the complaint, a case in Cr.No.143 of 2022 has been registered for the offences punishable under Section 291 IPC. Challenging the same, the petitioner filed the present petition.

3.The learned counsel appearing for the petitioner submitted that Section 290 IPC is a non-cognizable offence. As per Section 155(2)



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Cr.P.C., no Police officer shall investigate a non-cognizable case without order of a Magistrate having power to try such case or commit the case for trial. However, in the present case, Section 291 IPC was implicated. To attract offence under Section 291 IPC, there must be proof of an injunction to the accused individually against repeating or continuing the same particular public nuisance. Then only Section 291 IPC can be implicated. In the present case, without any injunction order, the first respondent Police registered a case under Section 291 IPC, which is not sustainable one. In support of his contention, he relied upon the decision of this Court in Crl.O.P.(MD)No.16135 of 2021 dated 09.11.2021. Accordingly, he prayed to quash the impugned FIR.

4.The learned Additional Public Prosecutor appearing for the first respondent submitted that on the date of occurrence, the District Collector and the first respondent Police imposed prohibitory order under Section 144 Cr.P.C., and thereby, the first respondent rightly registered the case under Section 291 IPC. Accordingly, he prayed to dismiss the present petition.



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5.Heard the learned counsel on either side perused the materials available in the records.

6.It is alleged that when Section 144 Cr.P.C., proceedings was initiated in the entire Ramanathapuram District, in view of Anniversary of Immanuvel Sekaran and Muthuramalinga Thevar, the petitioner herein played songs in high sound and caused public nuisance. Therefore, a case in Cr.No.143 of 2022 has been registered for the offence under Section 291 IPC. The learned counsel appearing for the petitioner relied upon the decision of this Court in CrI.O.P.(MD)No.16135 of 2021 dated 09.11.2021 and in the said decision, this Court held as follows:-

5.The question that arises for consideration is whether the acts attributed to the petitioners can be said to attract the offence under Section 291 of IPC. One of the very few cases on the subject is the one reported in ILR (1886) 8 ALL 99 (QueenEmpress vs. Jokhu). It was held by His Lordship Mr.Justice Oldfield that to support a conviction under Section 291 of the Penal Code, there must be proof of an injunction to the accused individually against repeating or continuing the same particular public nuisance. It must be shown that the person convicted had on



some previous occasion committed the particular nuisance, had been enjoined not to repeat or continue it, and had repeated or continued it. The authority under which a Magistrate can order or enjoin a person against repeating or continuing a public nuisance is Section 143 of the Criminal Procedure Code; and it is the infringement of this order or injunction that is punishable under Section 291 of the Indian Penal Code; and it is clear that what is contemplated is an order addressed to a particular person (see Schedule V, Form 20). Of course, Justice Oldfield was referring to what is now the old 1898 Code.

6. Section 143 of the old Code was as follows :

“A District Magistrate or Sub-divisional Magistrate, or any other Magistrate empowered by the Local Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code (XLV of 1860) or any special or local law.”

When it was suggested that a penalty should be prescribed for disobedience of an order under Section 143, the Law Commission of India in its 37th Report (1968) felt that the provisions of Section 291 of IPC are enough. Interestingly, Section 143 of the new Code is also almost identically worded. It is therefore safe to conclude that Section 291



can be invoked only for breach of the order passed under Section 143 of Cr.PC.

7. Section 291 of IPC is as follows :

“Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.”

Chapter X (B) of Cr.Pc contains provisions relating to public nuisances. The Executive Magistrate has been conferred with power and jurisdiction to deal with them. Section 291 of IPC employs the expression “enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance”. The statutory scheme contemplates commission of public nuisance, passing of an injunction order restraining its commission and continuance or repetition of the act in defiance of the injunction order. Section 291 of IPC cannot be invoked in the very first instance.

8. A formal proceeding from the competent authority must have been issued between the first commission of the act of public nuisance and its repetition. In the case on



hand, there has been no such issuance of formal proceeding against the petitioners. The statement by the informant police that the accused did not pay heed to their instruction will not constitute an offence under Section 291 of IPC. The act of committing public nuisance by itself is a non-cognizable offence. For it to become a cognizable offence, a further element is required and that is enjoining by the competent public servant to the person concerned to desist from indulging in the act and the person to whom the directive has been issued must defy the same and repeat the act of public nuisance. Then and then alone Section 291 of IPC will get attracted and not otherwise. In the case on hand, the conditions precedent for invoking Section 291 of IPC are wholly absent.

9.What cannot be done directly cannot be done indirectly also. This doctrine is based upon the Latin maxim “Quando aliquid prohibetur ex directo, prohibetur et per obliquum”. This principle can be applied to criminal law also. The respondent police could not have registered a case under Section 290 of IPC on their own against the petitioners. In order to overcome the statutory bar created by Section 155 of Cr.Pc, the police invoked Section 291 of IPC. For the reasons set out above, I hold that the very registration of the impugned FIR is a clear abuse of legal process. It is quashed. The criminal original petition is allowed. Connected miscellaneous petition is closed.



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7.The above said decision is squarely applicable to the facts of the present case. Therefore, this Court has no hesitation to quash the impugned FIR. Accordingly, FIR in Crime No.143 of 2022 pending on the file of the first respondent Police is hereby quashed and this petition is allowed. Consequently, connected miscellaneous petition is closed.

26.03.2024

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

- 1.The Inspector of Police,
Chathirakkudi Police Station,
Ramanathapuram District.

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



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M.DHANDAPANI,J.

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