



Crl.O.P.(MD)No.21791 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 12.12.2024

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THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.21791 of 2024

and

Crl.M.P.(MD)No.13523 of 2024

M.Backiaraj

... Petitioner

Vs.

1.State through,
The Inspector of Police,
Kadayam P.S.,
Tenkasi District.

2.Sudar Selvan,
Village Administrative Officer,
South Kadayam Village,
Tenkasi District.

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records pertaining to the case in Crime No.269 of 2023, on the file of the first respondent Police and quash the same.

For Petitioner : Mr.P.Subbiah

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



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ORDER

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This Criminal Original Petition has been filed seeking to quash the F.I.R. in Crime No.269 of 2023, pending on the file of the first respondent Police.

2. The case of the prosecution is that the petitioner applied for the installation and worship of a Ganesh idol on the occasion of the Ganesh Chaturthi festival. However, the Revenue Divisional Officer of Tenkasi, in his proceedings (Na.Ka.No.1/4919/2023), dated 15.09.2023, denied permission. Despite the same, a Ganesh idol was installed on 18.09.2023 at around 06:30 p.m. Subsequently, in the presence of officials from the Revenue Department, Police, and the Hindu Religious and Charitable Endowments Department, the idol was removed and handed over to the Hindu Religious and Charitable Endowments Department at Viswanathar Mandapam in the Kadyam Vishwanatha Swami Temple. Hence, the second respondent lodged a complaint. On the basis of the complaint filed by the second respondent, the first respondent Police registered a case in Crime No.269 of 2023 for offences under Sections 143 and 291 of the Indian Penal Code (I.P.C.) against the petitioner.



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3. The learned counsel for the petitioner submitted that the order refusing to grant permission, reportedly passed by the Revenue Divisional Officer of Tenkasi, was not served to the petitioner before the registration of the F.I.R. The petitioner only became aware of the order upon seeing the impugned F.I.R.

4. The learned counsel for the petitioner further argued that the offences under Sections 143 and 291 of the I.P.C. have not been substantiated in the second respondent's complaint, as the complaint does not indicate that the petitioner committed any offence. The first respondent should not have registered the case solely based on the petitioner's application for permission to install an idol for worship on the occasion of Ganesh Chaturthi. Further, the learned counsel contended that there was no mention of any nuisance in the complaint, and therefore, the continuation of any nuisance after an injunction to discontinue does not arise. Hence, the alleged commission of an offence under Section 291 of the I.P.C. lacks merit.



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5. The learned counsel also submitted that the offence under Section 143 of the I.P.C. is not made out, as there is no indication of an unlawful assembly in the complaint.

6. Per contra, the learned Additional Public Prosecutor submitted that the first respondent Police had registered the case in Crime No.269 of 2023 based on the complaint lodged by the second respondent, for the offences under Sections 143 and 291 of the Indian Penal Code (I.P.C.). The Additional Public Prosecutor submitted that the case was rightly registered in accordance with the law, as the petitioner had violated the directions of the Revenue Divisional Officer by installing the Ganesh idol without the necessary permission. The learned Additional Public Prosecutor emphasized that the action of removing the idol and handing it over to the Hindu Religious and Charitable Endowments Department was justified as per the rules, particularly, since the installation was carried out despite the denial of permission.

7. The learned Additional Public Prosecutor submitted that the investigation had been completed and the final report was filed before



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the Judicial Magistrate Court, Tenkasi, on 10.12.2024, through e-filing mode [E-filing No.20220002190C202400614], and the same is now pending.

8. The learned Additional Public Prosecutor also submitted that while there may not have been direct reference to an unlawful assembly in the complaint, the petitioner's actions could still be construed as creating a risk for public order, particularly, considering that the installation occurred without permission and the involvement of several individuals in the event.

9. Heard the learned counsel for the petitioner and the learned Additional Public Prosecutor appearing for the State.

10. At this juncture, it is necessary to refer the decision of this Court in Crl.O.P.(MD)No.16135 of 2021 dated 09.11.2021 and the relevant passages are extracted hereunder:

"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



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the subject is the one reported in ILR (1886) 8 ALL 99 (Queen-Empress 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



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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.P.C. 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



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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.”

11. Considering the submissions and on perusal of the materials on record, it is seen that the petitioner was not served with the order of



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refusal issued by the Revenue Divisional Officer before the registration of the F.I.R. This procedural lapse casts doubt on the legitimacy of the registration of the case, as the petitioner was unaware of the official decision prior to the registration of the case. This is an important factor that the Court took into account in evaluating the legality of the F.I.R.

12. Further, the complaint did not clearly disclose any act that would constitute an unlawful assembly (Section 143 I.P.C.) or public nuisance (Section 291 I.P.C.). The petitioner's action of installing the idol did not appear to fit the criteria for either offence, particularly, as the complaint did not establish that the petitioner had assembled unlawfully or caused any disturbance to the public. Further, there was no clear evidence to support the continuation of any nuisance after an injunction, which could have justified the charge under Section 291 I.P.C.

13. This Court also agrees with the petitioner's counsel that no nuisance was alleged in the complaint, and therefore, the charge under Section 291 I.P.C. did not hold. The installation of the idol, though unauthorized, did not lead to a public nuisance that would justify



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criminal action. This Court also found that the charge of unlawful assembly under Section 143 I.P.C. could not be sustained. The complaint did not indicate that there was an unlawful assembly of persons in connection with the installation of the idol, and the mere act of installing an idol without permission does not, by itself, constitute an unlawful assembly. Therefore, this Court concluded that there was insufficient evidence to support the registration of the case under Sections 143 and 291 I.P.C. The petitioner's application for permission to install the idol was not itself a criminal act, and the subsequent installation of the idol did not cause any tangible disturbance or nuisance that would justify criminal charges.

14. Furthermore, the above said decision is squarely applicable to the case on hand. As rightly observed, Section 291 I.P.C. can be invoked only for breach of the order passed under Section 143 of Cr.PC.

15. Considering the above, this Court has no hesitation to hold that the very registration of F.I.R. is illegal and as such, the consequent filing of final report cannot be legally sustained. Accordingly, this Court concludes that the final report is liable to be quashed.



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16. In the result, this Criminal Original Petition is allowed and the proceedings in Crime No.269 of 2023 on the file of the first respondent Police and the consequent filing of the final report before the Judicial Magistrate Court, Tenkasi, on 10.12.2024, through e-filing mode, are hereby quashed. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes / No
Index : Yes / No
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12.12.2024

Copy to:-

The Judicial Magistrate,
Tenkasi.

To

1.The Inspector of Police,
Kadayam P.S.,
Tenkasi 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
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Dated: 12.12.2024