



Crl.O.P.No.27687 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.10.2025

CORAM:

THE HON'BLE MR.JUSTICE N. SATHISH KUMAR

Crl.O.P.No.27687 of 2025

and

Crl.M.P.No.18801 of 2025

P.M.Kumar

... Petitioner

Vs.

1. The Superintendent of Police,
Kanchipuram District,
Collectorate Campus,
Kanchipuram – 631 501.
2. The Inspector of Police,
Baluchettychatram Police Station,
Kanchipuram Taluk and District.

(Crime No.156 of 2018)

... Respondents

PRAYER : Criminal Original Petition is filed under Section 528 of BNSS, to call for the records pertaining to the proceedings in Crime No.156 of 2018, on the file of the second respondent.

For Petitioner : Mr.R.Anbalagan

For Respondents : Mr.R.Vinothraja
Government Advocate (Criminal Side)



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ORDER

WEB COPY The Criminal Original Petition has been seeking to quash the First Information Report in Crime No.156 of 2018, pending on the file of the second respondent Police.

2. The allegation in the final report is that on 04.04.2018, the petitioner, who was Union Secretary of DMK, East Kanchipuram, along with other persons, unlawfully assembled at the Baluchettychatram bus stand and by conducting a protest, caused to the public. Therefore, a case in Crime No.156 of 2018 was registered for the offences under Sections 143 & 188 IPC.

3. The learned counsel appearing for the petitioner submitted that except for the general allegation, there is no specific allegation against the petitioner and no other materials are available. He further submitted that the prosecution has been launched with false allegations and even when the entire prosecution case is taken at face value, the same would not constitute any offence. He also submitted that continuing the prosecution would amount to nothing but an abuse of process of law. Therefore, he prayed that the proceedings may be quashed.



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4. The learned Government Advocate (Criminal Side) appearing for the respondent police submitted that the accused unlawfully assembled without any prior permission and violated the prohibitory order under Section 144 of Cr.P.C. Hence, the First Information Report was registered under Sections 143 & 188 IPC.

5. It is to be noted that while exercising the power under Section 482 Cr.P.C (corresponding to Section 528 BNSS), the Court should be slow. At the same time, if the Court finds that the entire materials collected by the prosecution, taken as a whole, would not constitute any offence, in such a situation, directing the parties to undergo the ordeal of trial would be a futile exercise and would infringe the right of the persons concerned. In this regard, the Apex Court in **State of Haryana and others Vs. Bhajan Lal and Others** reported in **1992 Supp (1) Supreme Court Cases 335**, has been held as follows :-

'.....

(a) where the allegations made in the First Information Report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case



against the accused;

(b) where the allegations in the First Information Report and other materials, if any, accompanying the F.I.R. do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the purview of Section 155(2) of the Code;

(c) where the uncontroverted allegations made in the FIR or 'complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused;

(d) where the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code;

(e) where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused;

(f) where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned



Act, providing efficacious redress for the grievance of the aggrieved party;

(g) where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge.'

6. It is also relevant to note the definition of Unlawful Assembly:

'Unlawful Assembly-

An assembly of five or more persons is designated an "unlawful assembly", if the common object of the persons composing that assembly is -

(i) to overawe by criminal force, or show of criminal force, the Central or any State Government or Parliament or the Legislature of any State, or any public servant in the exercise of the lawful power of such public servant; or

(ii) to resist the execution of any law, or of any legal process; or

(iii) to commit any mischief or criminal trespass, or other offence; or

(iv) by means of criminal force, or show of criminal force, to any person to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right; or



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(v) by means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound to do, or to omit to do what he is legally entitled to do.'

7. Only when the assembly fit into any of the above circumstances, it could be construed as unlawful. The materials collected by the prosecution do not show that the accused had shown any criminal force to commit any mischief, crime or any offence or by way of criminal force, tried to take possession of the property or exercise any incorporeal right in the possession or enjoyment of others.

8. Similarly to attract the offence under Section 188 IPC, there must be disobedience to an order duly promulgated by the public servant. In this case, there is evidence available to show that the accused has assembled to resist or execution of any law and there is no whisper whatsoever available in the First Information Report or in the other materials to show that there were promulgation or there were any prohibitory order existed at the relevant point of time. In this regard it is relevant to refer to a judgment of a Division Bench of this Court in **Moogambigai**



S.Thirugnanasammantham and others Vs. State rep. by the Inspector of Police, Karur reported in **2021 0 Supreme [Mad] 555**, wherein it has

been held as follows:

'....

(9) When the allegations in the FIR and the materials collected by the prosecution does not disclose the commission of any offence and make out a case against the accused and the prosecution itself is instituted with an ulterior motive for wreaking vengeance, this Court can exercise power under Section 482 Cr.P.C. with regard to quashing of the charge sheet for the offence under Section 188 IPC, this Court in Jeevanandam and others Vs. State rep. by the Inspector of Police reported in 2018-2-L.W.(Crl) 606 has relied a judgment in V.Gowthaman and others Vs. State rep. by its Inspector of Police, St.Thomas Mount Police Station, Chennai reported in '2018 (4) CTC 252' and held that the cognizance taken by the Magistrate under Section 188 IPC is not permissible and therefore, the prosecution of the accused under Section 188 IPC stands quashed.'

9. Further, the police have no powers to initiate prosecution under Section 188 IPC. The offence under section 188 IPC can be taken cognizance of only on the basis of a written complaint by a public servant. There is a clear bar under section 195 Cr.P.C. for the Court to take



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cognizance of the offence. Under these circumstances, continuing the proceedings against the petitioner would only be a futile exercise.

10. Considering the above, this Court is of the view that the mere launching of a final report by the prosecution itself is not sufficient to reach to the conclusion that the offences are made out. The materials collected by the prosecution do not support the case, therefore, continuing the prosecution on such shaky grounds or without any materials would amount to a clear abuse of the process of law.

11. In such view of the matter, this Court is inclined to quash the First Information Report in Crime No.156 of 2018. Accordingly, the Criminal Original Petition is allowed and the First Information Report in Crime No.156 of 2018, pending on the file of the second respondent, is quashed. Consequently, the connected miscellaneous petition is closed.

10.10.2025

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Neutral Citation: Yes/No



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- To
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Kanchipuram District,
Collectorate Campus,
Kanchipuram – 631 501.
 2. The Inspector of Police,
Baluchettychatram Police Station,
Kanchipuram Taluk and District.
 3. The Public Prosecutor,
High Court of Madras.



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N. SATHISH KUMAR, J.

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