



Crl.O.P.(MD) No.1800 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 03.09.2025

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THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.(MD) No.1800 of 2024

and

Crl.M.P.(MD) Nos.1327 & 1328 of 2024

Mathiyarasan

... Petitioner

Vs.

The State, represented by its
The Sub - Inspector of Police,
Elayangudi Police Station,
Sivagangai District.
[Crime No.67 of 2017]

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, 1973/Section 528 of Bharathiya Nagarik Suraksha Sanhita, 2023 to call for the entire records relating to the impugned charge sheet in S.T.C.No.1467 of 2019 on the file of the learned Judicial Magistrate No.I, Sivagangai and to quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.M.S.Jeyakarthik

For Respondent : Mr.K.Sanjai Gandhi
Government Advocate (Criminal Side)



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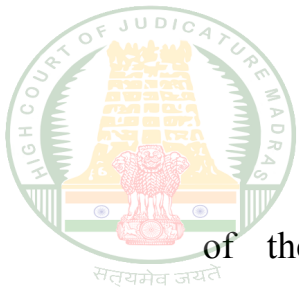
ORDER

WEB COPY This petition has been filed to quash the charge sheet filed by the respondent in S.T.C. No.1467 of 2019, on the file of the learned Judicial Magistrate No.I, Sivagangai.

2. The allegation against the petitioner in the final report is that the petitioner, along with others, had protested in front of the Ration Shop without valid permission and thereby committed offences under Sections 143 and 188 of the Indian Penal Code.

3. The learned counsel for the petitioner would submit that the impugned prosecution is misconceived, as the offences under Sections 143 and 188 of the Indian Penal Code are not made out. He would rely upon the order of this Court in ***Jeevanandham and others vs. State rep. by Inspector of Police, Velayuthampalayam Police Station, Karur District and another***, dated 20.09.2018, rendered in Crl.O.P.(MD) No. 1356 of 2018, etc., batch.

4. This Court has perused the impugned final report. The allegation against the petitioner is that he, along with others, had protested in front



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of the Ration Shop without valid permission. In the case of **Jeevanandham**, referred to *supra*, which related to a protest without valid permission and when the accused had filed quash petition of the final report filed for the offences under Sections 143 and 188 of the Indian Penal Code, this Court had observed as under:

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, 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;



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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.



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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.

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

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



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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 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.

5. These above observations squarely apply to the facts of the present case. Hence, the impugned final report is liable to be quashed and is accordingly quashed.

6. In the result, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petitions are closed.

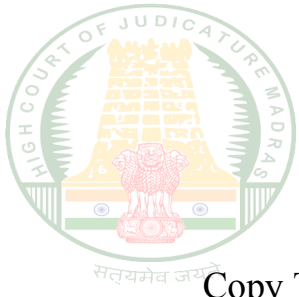
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Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order/Non-Speaking Order



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The Sub - Inspector of Police,
Elayangudi Police Station,
Sivagangai District.



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SUNDER MOHAN, J.

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