



Crl.O.P.(MD)No.22059 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2025

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.22059 of 2024

and

Crl.M.P.(MD)No.13685 of 2024

1.Anbu Selvam
2.Boominathan
3.Manickkam

... Petitioners

Vs.

1.State of Tamil Nadu, Rep. by
The Inspector of Police,
Parthibanoor Police Station,
Ramanathapuram District.
(Crime No.176 of 2023)

2.Duraiselvam,
S/o.Backkiyam,
Village Administrative Officer,
Soodiyur Group,
Melaparthibanur,
Paramakudi Taluk,
Ramanathapuram District.

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of BNSS, 2023, to call for the records pertaining to Crime No.176 of 2023, dated 27.09.2023, on the file of the Inspector of Police, Parthibanoor, Ramanathapuram District, and quash the same.



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Crl.O.P.(MD)No.22059 of 2024

For Petitioners : Mr.D.S.Haroon Rasheed
For R1 : Mr.A.Thiruvadi Kumar
Additional Public Prosecutor

ORDER

The petitioners, who are arrayed as A13, A17 and A20 in Crime No.176 of 2023, for the offences under Sections 143, 188 and 353 of the I.P.C., have filed this Criminal Original Petition, seeking to quash the proceedings pending against them.

2. The case of the prosecution is that the de-facto complainant, who is serving as a Village Administrative Officer, reported that on 26.07.2023, during the Temple festival, members of the Devendra Kula Vellalar community, while taking the Mulapari (a ceremonial procession), passed through the area of the Maravar community. This led to tensions between the two communities. To resolve the matter and maintain peace, a peace committee meeting was convened on 07.09.2023, in which both communities agreed to immerse the Mulapari at Melaparthibanur Kanmai (a water body). However, despite this agreement, on 27.09.2023 at approximately 05:30 p.m., the accused persons, in defiance of the peace committee's decision, attempted to



Crl.O.P.(MD)No.22059 of 2024

WEB COPY

immerse the Mulapari at Keelaparthibanoor North residential area. Their actions were in direct violation of the peace committee's decision, leading to further unrest and disputes between the communities. Hence, the de-facto complainant lodged a complaint, which led to the registration of the case.

3. The learned counsel for the petitioners submits that the real facts of the case are that both communities, including the Devendra Kula Vellalar and Maravar communities, jointly participated in the Temple festival, and no disturbances or unlawful activities occurred as alleged by the prosecution. Therefore, the F.I.R. is based on a false version of events.

3.1. The learned counsel for the petitioners submits that the F.I.R. has been registered under Section 188 of the I.P.C., which deals with disobedience of orders by a public servant. However, the Police cannot register an F.I.R. under Section 188 I.P.C. without a prior order from the Magistrate, and since no such order was obtained, the registration of the F.I.R. is invalid and liable to be quashed.



Crl.O.P.(MD)No.22059 of 2024

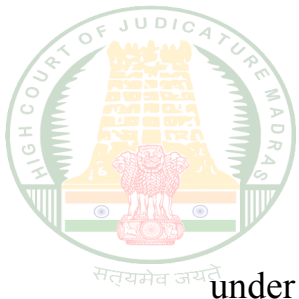
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3.2. The learned counsel for the petitioners further submits that the charge under Section 143 of the I.P.C., relating to unlawful assembly, is inapplicable as the petitioners were not involved in any such assembly or disturbance.

3.3. The learned counsel submits that Section 353 of the I.P.C., dealing with assault or criminal force against a public servant, does not apply, as no assault or criminal force was used against any public servant in this case, and the prosecution's allegations do not support this charge.

3.4. The learned counsel further submits that the offences alleged in the F.I.R. are punishable with a maximum imprisonment of two years, and hence, the investigation should have been completed, and the final report filed within one year. As the investigation is still incomplete and no final report has been filed, the case is barred by limitation and is liable to be quashed.

3.5. The learned counsel further submits that the F.I.R. is unsustainable, arbitrary, and unreasonable, as the provisions of the I.P.C.



Crl.O.P.(MD)No.22059 of 2024

WEB COPY

under which the F.I.R. has been registered do not apply to the facts of the case. Therefore, the F.I.R. and the subsequent proceedings should be quashed to prevent an abuse of the legal process.

3.6. The learned counsel for the petitioners also submits that the co-accused in this case viz., A1, A2, A3, A5 and A12 had already filed Crl.O.P.(MD)Nos.19502 and 19590 of 2023 before this Court, and this Court, on 19.12.2023 after considering the matter, quashed the proceedings only insofar as the offence under Section 188 of the I.P.C. is concerned. However, it is important to highlight that when the said Criminal Original Petitions were listed before this Court, the judgment of the Hon'ble Supreme Court in **Manik Taneja and another vs. State of Karnataka and another** reported in **2015 (7) SCC 423** was not presented before this Court. The Hon'ble Supreme Court's judgment in that case is relevant and could have impacted the decision in the present case, especially in relation to Section 353 of the I.P.C. Therefore, in the interest of justice, the present petition should also be considered in light of the judgment of the Hon'ble Supreme Court, which may lead to quashing the proceedings against the petitioners as well.



Crl.O.P.(MD)No.22059 of 2024

WEB COPY

4. The learned Additional Public Prosecutor submits that the allegations in the F.I.R. are substantiated by the complaint of the de-facto complainant, who is a Village Administrative Officer. The prosecution's case indicates that, contrary to the claims of peaceful participation, the accused persons, including the petitioners, attempted to act in violation of the peace committee's decision, thereby disturbing the peace and causing potential communal tension. Therefore, the F.I.R. cannot be quashed as false or fabricated at this stage, as it reflects the immediate concerns raised by the authorities regarding public order.

4.1. The learned Additional Public Prosecutor further submits that the registration of the F.I.R. under Section 188 of the I.P.C. is valid. It is within the discretion of the Police to register an F.I.R. based on disobedience of lawful orders, especially in situations where public peace and order are at stake. There is no requirement under Section 188 of the I.P.C. that the order must specifically come from a Magistrate prior to the registration of the F.I.R. The facts of this case show that the accused acted in defiance of an established peace committee decision, which is a violation of Section 188 I.P.C.



Crl.O.P.(MD)No.22059 of 2024

WEB COPY

4.2. The learned Additional Public Prosecutor submits that the charge under Section 143 I.P.C., which deals with unlawful assembly, is applicable in this case. The petitioners, along with other accused persons, acted collectively in defiance of the peace committee's decision, which constitutes an unlawful assembly. The presence of the accused at the site with the intention of immersing the Mulapari in a prohibited location shows the ingredients of an unlawful assembly, thus, justifying the charge under Section 143 I.P.C.

4.3. The learned Additional Public Prosecutor submits that the charge under Section 353 I.P.C. is relevant in the context of the actions of the accused persons, as the Police were involved in maintaining order at the site. While there is no explicit allegation of assault, the resistance to the authorities' attempts to uphold public order, in violation of a peace committee's decision, could be interpreted as the use of criminal force against public servants in the course of their duty. The allegations in the F.I.R. do provide a sufficient basis for the charge under Section 353 I.P.C.



Crl.O.P.(MD)No.22059 of 2024

WEB COPY

4.4. The learned Additional Public Prosecutor submits that the bar on limitation does not apply in this case because the offence under Section 353 of the I.P.C. is punishable with imprisonment up to two years. As per Section 468(2)(c) of the Cr.P.C., the limitation period for taking cognizance of an offence is three years, provided the offence is punishable with imprisonment for a term exceeding one year but not exceeding three years. Since the investigation is still ongoing and has not exceeded the limitation period, the delay in filing the final report does not justify quashing the proceedings. Furthermore, the complexities involved in the case, including communal tensions and the need for further enquiry, may explain the ongoing nature of the investigation. Thus, the learned Additional Public Prosecutor contends that the delay is not substantial enough to quash the case.

4.5. The learned Additional Public Prosecutor submits that the F.I.R. is not arbitrary or unreasonable. The sections under which the F.I.R. has been registered are applicable considering the nature of the offence, the disturbance of public peace, and the defiance of lawful orders. The learned Additional Public Prosecutor submits that the F.I.R.



Crl.O.P.(MD)No.22059 of 2024

WEB COPY

reflects a valid and lawful exercise of authority, and there are sufficient grounds to continue with the proceedings. Quashing the F.I.R. at this stage would be premature and would prevent the investigation from being completed in full.

4.6. The learned Additional Public Prosecutor further submits that the facts and circumstances involving each accused are distinct, and the petitioners' involvement in the unlawful act is still under investigation. Furthermore, the judgment in **Manik Taneja vs. State of Karnataka** (cited supra) does not change the applicability of the provisions under Sections 188, 143, and 353 of the I.P.C. in this case. The ruling in the cited case does not directly address the situation at hand and cannot be relied upon to quash the F.I.R. against the petitioners.

5. After considering the submissions made by both parties and on perusal of the materials on record, this Court finds that the F.I.R. registered under Section 188 of the I.P.C. is invalid as no prior order from a Magistrate was obtained. Furthermore, the charges under Section 143 of I.P.C. (unlawful assembly) and Section 353 of I.P.C. (assault or



Crl.O.P.(MD)No.22059 of 2024

WEB COPY

criminal force against a public servant) do not apply, as there is no evidence to support the allegations of unlawful assembly or the use of force against public servants.

6. In the light of the above facts, this Court concludes that the F.I.R. is unsustainable, and therefore, the proceedings against the petitioners as well as the other accused in Crime No.176 of 2023 are quashed. Accordingly, this Criminal Original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

NCC : Yes / No
Index : Yes / No
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10.01.2025

To

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



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Crl.O.P.(MD)No.22059 of 2024

M.NIRMAL KUMAR, J.

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Order made in
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Dated: 10.01.2025