



Crl.O.P.(MD) No.18318 of 2025

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 27.10.2025

CORAM

THE HON'BLE MR.JUSTICE SUNDER MOHAN

Crl.O.P.(MD) No.18318 of 2025

and

Crl.M.P.(MD) Nos.15032 & 15035 of 2025

Gokulpandi

... Petitioner

Vs.

1.The State of Tamil Nadu rep. by
The Inspector of Police,
Vilathikulam Police Station,
Thoothukudi District.
(Crime No.107 of 2024)

2.Mr.Thirumalai,
Sub-Inspector of Police,
Vilathikulam Police Station,
Thoothukudi District.

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of Bharathiya Nagarik Suraksha Sanhita, 2023 to call for the records pertaining to the case in S.T.C.No.943 of 2025 on the file of the learned District Munsif cum Judicial Magistrate, Vilathikulam and quash the same insofar as the petitioner is concerned.

For Petitioner : Mr.R.Jagadeeshwaran



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For R1

: Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been filed seeking to quash the final report in S.T.C.No.943 of 2025 on the file of the learned District Munsif cum Judicial Magistrate, Vilathikulam, filed against the petitioner/A2 for the offence punishable under Section 291 of the Indian Penal Code, 1860.

2. The gist of the allegations in the final report is that the petitioner, along with others, had danced in an obscene manner in front of the temple car and abused the passers-by in filthy language, stating that it is their festival, and thus committed the offence.

3. The learned counsel for the petitioner would submit that even if the allegations are accepted to be true, the offence punishable under Section 291 of the Indian Penal Code, 1860, would not be made out, as there was no injunction issued by any lawful authority not to repeat or continue any nuisance, and therefore, the impugned prosecution is liable to be quashed.



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4. The learned Government Advocate (Criminal Side) for the first respondent would reiterate the allegations in the final report.

5. As stated in the final report, the petitioner, along with others, has committed nuisance to the general public by dancing in front of the car and uttering certain words. Section 291 of the Indian Penal Code, 1860, reads as under:

“291. Continuance of nuisance after injunction to discontinue.—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.”

6. The offence would be made out only if a person repeats or continues a public nuisance even after an injunction has been issued by any lawful authority not to repeat or continue such offence. Admittedly, in this case, no such injunction has been issued by any lawful authority. Under a similar circumstance, this Court, in a judgment in ***Ravikumar v. The Inspector of Police, Puliampatti Police Station and another***, dated 30.09.2024 in Crl.O.P.(MD) No.13470 of 2024, after referring to the



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earlier its judgment in Crl.O.P.(MD) No.16135 of 2021 dated 09.11.2021,

observed as follows:

“6.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 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



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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.”

7.The above decision is squarely applicable to the case on hand. As rightly observed, Section 291 IPC



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can be invoked only for breach of the order passed under Section 143 of Cr.PC. But, in the case on hand, admittedly, no such order has been passed by the concerned Executive Magistrate.”

7. The above observations squarely apply to the facts of this case. Therefore, this Court is of the view that, in the absence of any injunction from any lawful authority restraining the petitioner from repeating or continuing the offence, the petitioner cannot be prosecuted for the offence under Section 291 of the Indian Penal Code, 1860, and therefore, the impugned prosecution is liable to be quashed. Accordingly, the impugned final report is quashed.

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

27.10.2025

JEN

Index: Yes/ No

Neutral Citation: Yes / No

Speaking Order / Non-Speaking Order

Copy To:

1.The District Munsif cum Judicial Magistrate,
Vilathikulam, Thoothukudi District.



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- 2.The Inspector of Police,
Vilathikulam Police Station,
Thoothukudi District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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SUNDER MOHAN, J.

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