



Crl.O.P.(MD)No.22747 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.01.2025

CORAM

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.(MD)No.22747 of 2024

and

Crl.M.P.(MD)Nos.14239 and 14242 of 2024

- 1.Solairaja @ Raja
- 2.Siva
- 3.Kattari Velmurugan @ Velmurugan
- 4.K.Soundrapandian @ Soundrapandi
- 5.P.Madhan @ Madhanamohan

... Petitioners

Vs.

- 1.State of Tamil Nadu,
Rep. by through the Inspector of Police,
Tirumangalam Town Police Station,
Madurai District.
(Crime No.249 of 2016)

- 2.S.Annaraj,
Inspector of Police,
Tirumangalam Town Police Station,
Madurai District.

... Respondents

PRAYER : Criminal Original Petition filed under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, to call for the records pertaining to S.T.C.No.314 of 2024, on the file of the Judicial Magistrate Court, Tirumangalam, in Crime No.249 of 2016, dated 08.05.2016, for



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the offences under Sections 143 and 188 of the I.P.C. and quash the same as illegal as against the petitioners.

For Petitioners : Mr.KR.Bharathi Kannan

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

ORDER

The Criminal Original Petition has been filed invoking Section 528 Bharatiya Nagarik Suraksha Sanhita, 2023, seeking orders to quash the proceedings in S.T.C.No.314 of 2024, on the file of the Judicial Magistrate Court, Tirumangalam.

2. The case of the prosecution is that on 08.05.2016, the de-facto complainant, while conducting a patrol during election time along with his police officials, observed the first petitioner, Solairaja (the Deputy Chairman of the Tamil Nadu Olympic Association), and other petitioners, along with around 500 individuals (who can be identified upon seeing), conducting an election campaign on the Virudhunagar to Madurai Main Road without prior permission. When the de-facto complainant, along with other police personnel, attempted to intercept



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the procession, the petitioners continued their election campaign at the same location. Hence, the de-facto complainant has lodged a complaint. Based on the complaint, a case in Crime No.249 of 2016 was registered for the offences under Sections 143 and 188 of the I.P.C. and on completion of investigation, filed the final report, which was taken cognizance of in S.T.C.No.314 of 2024, by the learned Judicial Magistrate, Tirumangalam.

3. The learned counsel for the petitioners submitted that Sections 143 and 188 of the Indian Penal Code (I.P.C.) cannot be applied to the petitioners. The petitioners and the other persons involved in the case have not violated any law, and there are no specific allegations against them indicating that they formed an unlawful assembly or used criminal force with a common object to overawe the Central or State Government, resist the execution of any law or legal process, or committed any mischief or criminal trespass. In the absence of such specific allegations, it is clear that the assembly in question cannot be considered an unlawful assembly, and the members of that assembly cannot be prosecuted under Section 143 of the I.P.C.



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4. The learned counsel further submitted that the charge under Section 188 of the I.P.C. against the petitioners should be set aside. The respondent police do not have the authority to register a case for an offence under Section 188 of I.P.C., as it is only the concerned public servant or an authorized officer who can file a written complaint before the Judicial Magistrate. In this case, no such written complaint was filed by any public servant, nor was there any violation of a promulgated order. Therefore, the charge under Section 188 of the I.P.C. in S.T.C.No. 314 of 2024, before the learned Judicial Magistrate, Tirumangalam, should be quashed.

5. The learned counsel for the petitioners further submitted that the petitioners have not violated any traffic regulations, as alleged in the impugned charge sheet. There are no specific allegations made against the petitioners. Further, the respondent police are infringing upon the petitioners' fundamental rights guaranteed under Article 19(1)(a) of the Constitution of India. The petitioners, along with others, have not conducted any demonstration as alleged by the prosecution, and no untoward incidents occurred during the event. Hence, the final report



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filed against the petitioners in S.T.C.No.314 of 2024 before the Judicial Magistrate Court, Tirumangalam, should be set aside.

6. The learned Additional Public Prosecutor for the State submits that there are specific allegations as against the petitioners to proceed with the case. Further, he would submit that Section 188 of I.P.C. is a cognizable offence and therefore, it is the duty of the Police to register a case. Though there is a bar under Section 195(a)(i) of Cr.P.C. to take cognizance for the offence under Section 188 of I.P.C., it does not mean that the Police cannot register F.I.R., investigate the case and file the final report. Hence, he vehemently opposed the quash petition and prayed for dismissal of the petition.

7. This Court considered the submissions made on either side and perused the materials available on record carefully.

8. Admittedly, the offences leveled against the petitioners are under Sections 143 and 188 of the I.P.C. Apart from the official witness, no other person has testified regarding the occurrence. Furthermore, it is evident from the final report that the alleged offences are of a simple and trivial nature.



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9. At this juncture, it is relevant to refer here Section 188 I.P.C., which reads as follows:

"188. Disobedience to order duly promulgated by public servant — Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction, shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month or with fine which may extend to two hundred rupees, or with both; and if such disobedience causes or trends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both."

10. The learned counsel for the petitioners relied upon a judgment in a batch of quash petitions, reported in **2018 (2) L.W. (CrI.) 606** in **Crl.O.P.(MD)No.1356 of 2018**, dated **20.09.2018** in the case of **Jeevanandham and others vs. State rep. by the Inspector of Police, Karur District**, and this Court held in Paragraph-25, as follows :-



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"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;

i) that there must be an order promulgated by the public servant;

ii) that such public servant is lawfully empowered to



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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



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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.

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."

11. In the case on hand, the First Information Report has been registered by the respondent Police for the offences under Sections 143 and 188 I.P.C. He is not a competent person to register F.I.R. for the offence under Section 188 of I.P.C. As such, the First Information Report or final report is liable to be quashed for the offence under Section 188 of I.P.C. Further, the complaint does not even state as to how the petitioners and others formed an unlawful assembly and does not satisfy the requirements of Section 143 of I.P.C. Therefore, the F.I.R. itself cannot be sustained and it is liable to be quashed. Admittedly in these cases, the occurrence took place in a public place, in public view, surprisingly no public or independent witness examined by the prosecution, which causes serious doubt on the veracity of the complaint.



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12. Further, this Court in the case of **Jeevanandham and others vs. State Rep. by Inspector of Police and another** reported in **2018 (2) L.W. Crl. 606**, had clearly held that the Police officials are not empowered to register a case under Section 188 I.P.C. and the same is barred under Section 195 Cr.P.C. There is no material to show that there was any promulgation of prohibitory order, which was communicated to the public and there was any disobedience by the petitioners. Further, in consequence, the prosecution failed to show whether any trouble occurred. The respondent Police failed to follow the guidelines issued by this Court in **Jeevanandham's case** (cited supra). In several cases, this Court quashed the proceedings against the accused on similar ground.

13. In the result, this Criminal Original Petition is allowed and the proceedings in S.T.C.No.314 of 2024, pending on the file of the Judicial Magistrate Court, Tirumangalam, is hereby quashed as against the petitioners and others, who are similarly placed. Consequently, connected Miscellaneous Petitions are closed.

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NCC : Yes / No
Index : Yes / No



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To
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- 1.The Judicial Magistrate,
Tirumangalam.
- 2.The Inspector of Police,
Tirumangalam Town Police Station,
Madurai District.
- 3.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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