

Palanisamy vs State Represented By on 29 October, 2024

CrI.O.P.(MD)No.1

'BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 01.10.2024

PRONOUNCED ON :29.10.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

CrI.O.P.(MD)No.15044 of 2024

1.Palanisamy
2.Sampath
3.Arumugam
4.Arumugam
5.Duraisamy

... Petitioners/Accused Nos.1 to

Vs.

1.State represented by
The Sub-Inspector of Police,
K.Paramathi Police Station,
Karur District.
In Crime No.322/2020.

... Respondent No.1/Complainant

2.K.Dharmalingam,
Sub-Inspector of Police,
K.Paramathi Police Station,
Karur District.

... Respondent No.2/Defacto compl

1/10

<https://www.mhc.tn.gov.in/judis>

CrI.O.P.(MD)No.

PRAYER: Criminal Original Petition has been filed under Section BSS, 202 seeking to call for the records in the case in S.T.C.No.175/2023, on the Court of Munsif cum Judicial Magistrate, Aravakurichi, Karur District and the same.

For Petitioners : Mr.M.Jothi Basu
For Respondents : Mr.E.Antony Sahaya Prabahar
Additional Public Prosecutor
for R.1

ORDER

The Criminal Original Petition has been filed invoking Section 528 of BNSS seeking orders to call for the records pertaining to the case in S.T.C.No. 175 of 2023, pending on the file of the District Munsif cum Judicial Magistrate, Aravakurichi, Karur District and quash the same.

2. The case of the prosecution is that on 16.06.2020 at about 10.50 hours near Karur-Paramathi Bazar street, the petitioners being the members of the CPI(M) political party had assembled unlawfully, when the Covid-19 lock down was in force and conducted a demonstration raising various demands that 100 days work scheme is to be extended to 200 days with a pay of Rs.350/- per day, [https://www.mhc.tn.gov.in/judis/Crl.O.P.\(MD\)No.15044 of 2024](https://www.mhc.tn.gov.in/judis/Crl.O.P.(MD)No.15044%20of%202024) that the State and Central Governments have to pay Rs.7,500/-per month for people affected with Corona and that the ration shops are to be directed to give 10kg per person.

3. The second respondent has registered F.I.R., in Cr.No.322 of 2020 against the petitioners herein for the alleged offences under Sections 143, 188, 269 I.P.C., r/w 3 of Epidemic Diseases Act.

4. The case of the petitioners is that the petitioners are the members of the National Political Party, that they have assembled to raise lawful demands with the State and Central Governments and as such, the same cannot be considered as unlawful assembly, that since there is no complaint in writing as contemplated under Section 195(1)(a)(i) Cr.P.C., the registration of F.I.R., and filing of the charge sheet under Section 188 I.P.C., is illegal, that even assuming that the case of the prosecution is true, the act of the petitioners cannot be considered as negligent act, as there is no material to show that their assembly will spread the corona virus and that therefore, the petitioners are constrained to file the present petition seeking quashment of the above case. [https://www.mhc.tn.gov.in/judis/Crl.O.P.\(MD\)No.15044 of 2024](https://www.mhc.tn.gov.in/judis/Crl.O.P.(MD)No.15044%20of%202024)

5. The learned Counsel for the petitioners would submit that the members of the CPI(M) party conducted agitation raising various demands including to pay Rs.7,500/- for the corona affected people by the State and Central Governments, that the petitioners were in no way connected with the alleged offences, that there are no specific overt acts attributed against them and that the petitioners have never committed any offences as alleged. The learned Counsel would further submit that there is a clear bar for taking cognizance of the offences under Sections 172 to 199 I.P.C., without complaint as contemplated under Section 195 Cr.P.C.

6. It is necessary to refer the decision of this Court in Vijay Vs. State represented by the Inspector of Police, Panagudi Police Station, Tirunelveli District in (Crl.OP(MD)Nos.8680 and 8681 of 2019; dated 02.02.2022), wherein this Court has dealt with the same issue and the relevant passages are extracted hereunder:

“ 14.At this juncture, it is necessary to refer the judgment of the Honourable Supreme Court in C. Muniappan & Ors vs State Of Tamil Nadu in CRIMINAL APPEAL Nos. 127-130 of 2008, dated 30.08.2010 and the relevant passages are extracted hereunder:

“20. Section 195(a)(i) Cr.PC bars the court from taking cognizance of any offence punishable under Section 188 IPC or [https://www.mhc.tn.gov.in/judis Crl.O.P.\(MD\)No.15044](https://www.mhc.tn.gov.in/judis/Crl.O.P.(MD)No.15044) of 2024 abetment or attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order. The object of this provision is to provide for a particular procedure in a case of contempt of the lawful authority of the public servant. The court lacks competence to take cognizance in certain types of offences enumerated therein. The legislative intent behind such a provision has been that an individual should not face criminal prosecution instituted upon insufficient grounds by persons actuated by malice, ill-will or frivolity of disposition and to save the time of the criminal courts being wasted by endless prosecutions. This provision has been carved out as an exception to the general rule contained under Section 190 Cr.PC that any person can set the law in motion by making a complaint, as it prohibits the court from taking cognizance of certain offences until and unless a complaint has been made by some particular authority or person. Other provisions in the Cr.PC like sections 196 and 198 do not lay down any rule of procedure, rather, they only create a bar that unless some requirements are complied with, the court shall not take cognizance of an offence described in those Sections. (vide Govind Mehta v. The State of Bihar, AIR 1971 SC 1708; Patel Laljibhai Somabhai v. The State of Gujarat, AIR 1971 SC 1935; Surjit Singh & Ors. v. Balbir Singh, (1996) 3 SCC 533; State of Punjab v. Raj Singh & Anr., (1998) 2 SCC 391; K. Vengadachalam v. K.C. Palanisamy & Ors., (2005) 7 SCC 352; and Iqbal Singh Marwah & Anr. v. Meenakshi Marwah & Anr., AIR 2005 SC 2119).

[https://www.mhc.tn.gov.in/judis Crl.O.P.\(MD\)No.15044](https://www.mhc.tn.gov.in/judis/Crl.O.P.(MD)No.15044) of 2024

27. Undoubtedly, the law does not permit taking cognizance of any offence under Section 188 IPC, unless there is a complaint in writing by the competent Public Servant. In the instant case, no such complaint had ever been filed. In such an eventuality and taking into account the settled legal principles in this regard, we are of the view that it was not permissible for the trial Court to frame a charge under Section 188 IPC.”

15.It is pertinent to note that Section 195 Cr.P.C, bars taking cognizance of any offence punishable under Sections 172 to 188 IPC, except on a complaint in writing given by the public servant concerned or some other public servant to whom he is administratively subordinate. A learned Single Judge of this Court in Jeevanandham and Others vs State, represented by the Inspector of Police, reported in 2018(2) LW (Crl.,) 606, after surveying the judgments of the Honourable Apex Court and of this Court, has held that the Police Officer cannot register a First Information Report, for an offence under Section 188 IPC, and the Judicial Magistrate cannot take cognizance of the

offence, based on the final report filed under Section 173 Cr.P.C.”

7. Considering the legal position above referred, this Court has no hesitation to say that the respondent police cannot register the case for the offence under Section 188 I.P.C., and as such, the same is liable to be quashed. <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.15044 of 2024

8. Now turning to Section 143 I.P.C., the learned Counsel appearing for the petitioners would submit that the protest by the party workers for raising various demands before the State and Central Governments is a democratic right and the same would not constitute the offence under Section 143 I.P.C., and he would rely on the decision of this Court in in CrI.O.P(MD)No.12612 of 2022 (Annadurai Vs.The Inspector of Police, South Gate Police Station, Madurai and another), dated 06.09.2022 and the relevant passage is extracted hereunder:

“9.In the case on hand, the First Information Report has been registered by the respondents / police for the offences also under Sections 143 and 188 IPC. He is not a competent person to register FIR for the offences under Section 188 of IPC. As such, the First Information Report or final report is liable to be quashed for the offences under Section 188 of IPC. Further, the complaint does not even state as to how the protest formed by the petitioner and others is an unlawful protest and does not satisfy the requirements of Section 143 of IPC. Therefore, the final report cannot be sustained and it is liable to be quashed.”

9. It is pertinent to note that the prosecution does not even state as to how the demonstration conducted by the party workers is an unlawful protest. Hence, <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.15044 of 2024 this Court has no other option, but to say that the case of the prosecution does not satisfy the requirements of Section 143 I.P.C.

10.Regarding section 269 I.P.C., and Section 3 of Epidemic Diseases Act, Section 269 I.P.C., deals with the negligent acts that are likely to spread disease that is dangerous to life. In order to attract the offence under Section 269 I.P.C., the prosecution has to prove that the accused performed a negligent act and that act was likely to spread a disease that is dangerous to life.

11. In the case on hand, it is not the case of the prosecution that the petitioners were suffering from covid-19 or from any infectious disease and that since they were infected with covid-19, they would spread the virus. The prosecution has neither shown nor produced any materials to prove prima facie that the petitioners were infected with infectious disease and there is a likelihood of them spreading it. In the absence of any such material, this Court has no hesitation to hold that the offence under Section 269 I.P.C., r/w Section 3 of Epidemic Disease Act are not attracted.

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12. Considering the above, this Court is of the view that the impugned charge sheet in S.T.C.No.175 of 2023, pending on the file of the Court of Munsif cum Judicial Magistrate Court, Aravakurichi, Karur District is liable to be quashed.

13. In the result, the Criminal Original Petition is allowed and the charge sheet in S.T.C.No.175 of 2023, pending on the file of the Court of Munsif cum Judicial Magistrate Court, Aravakurichi, Karur District is quashed.

29.10.2024 NCC : Yes/No Index : Yes/No Internet: Yes/No SSL To

1. The Court of Munsif cum Judicial Magistrate Court, Aravakurichi, Karur District.

2.The Sub-Inspector of Police, K.Paramathi Police Station, Karur District.

3.The Additional Public Prosecutor, Madurai Bench of Madras High Court, Madurai.

<https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.15044 of 2024 K.MURALI SHANKAR, J.

SSL Pre-Delivery order made in Crl.O.P.(MD)No.15044 of 2024 29.10.2024
<https://www.mhc.tn.gov.in/judis>