

Mariappan vs The Inspector Of Police on 4 October, 2024

Crl.O.P.(MD)N

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 12.09.2024

Pronounced on : 04.10.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

Crl.O.P.(MD)No.13453 of 2024

and

Crl.M.P.(MD)No.8338 of 2024

Mariappan

Vs.

1.The Inspector of Police,
Puliampatti Police Station,
Thoothukudi District.
(In Crime No.36 of 2022)

2.Kannan,
working as Sub-Inspector of Police,
Puliampatti Police Station,
Thoothukudi District

Prayer : This Criminal Original Petition filed under Section 528 BNS call for the records relating to the case in STC.No.13 of 2022 on th the learned Judicial Magistrate, Ottapidaram and quash the same as i insofar as this petitioners are concerned.

For Petitioner : Mr.M.Prabu

1/10

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

Crl.O.P.(MD)No.

For R1 : Mr.E.Antony Sahaya Prabahar,
Additional Public Prosecutor.

ORDER

This criminal original petition has been filed seeking orders to quash the charge sheet in STC.No.13 of 2022 pending on the file of the learned Judicial Magistrate, Ottapidaram.

2.The case of the prosecution is that on 15.05.2022 at about 01.00 pm., the defacto complainant, Sub-Inspector of Police, along with his team were on patrol duty and they have found that the petitioner and other accused were uttering filthy words in public place, that the Police directed them to disperse and they defied the direction and continue to commit public nuisance and hence, the second respondent lodged a complaint.

3.On the basis of the complaint given by the second respondent, the first respondent registered a case in Cr.No.36 of 2022 for the offence under Section 291 IPC as against three persons including the petitioner herein. After completing investigation, the first respondent has filed the <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.13453 of 2024 final report and the same was taken on file in STC.No.13 of 2022 and the same is pending on the file of the learned Judicial Magistrate, Ottapidaram.

4.When the matter is taken up earlier, the learned counsel appearing for the petitioner submitted that FIR came to be registered for the offence under Section 291 IPC, without getting permission from the Jurisdictional Magistrate as the offence is non-cognizable in nature. But, it is pertinent to note that the offence under Section 290 IPC alone is non-cognizable whereas the offence under Section 291 IPC is cognizable in nature.

5.The learned counsel appearing for the petitioner would then contend that the acts / commissions attributed to the petitioner cannot be said to attract the offence under Section 291 IPC.

6.At this juncture, it is necessary to refer the decision of this Court in CrI.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 <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.13453 of 2024 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 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.” <https://www.mhc.tn.gov.in/judis> CrI.O.P.(MD)No.13453 of 2024 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.

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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 <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.13453 of 2024 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.

6.The above decision is squarely applicable to the case on hand. As rightly observed, Section 291 IPC 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.In the case on hand, it is the specific case of the prosecution that when the Police had directed the accused to disperse, they defied the direction and continued to commit public nuisance by uttering filthy words in the public place. It is not the case of the prosecution that proceedings from the competent authority had been issued restricting the accused from committing public nuisance. The very statement of the respondent Police that the accused did not pay heed to their direction by itself will not constitute the offence under Section 291 IPC.

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8.Considering the above, this Court has no hesitation to hold that the very registration of FIR is illegal and as such, the consequent filing of charge sheet cannot be legally sustained. Accordingly, this Court concludes that the impugned charge sheet is liable to be quashed.

9.In the result, this criminal original petition is allowed and the charge sheet in STC.No.13 of 2022 pending on the file of the learned Judicial Magistrate, Ottapidaram is hereby quashed. Consequently, connected miscellaneous petition is closed.

04.10.2024 NCC :yes/No Index :yes/No Internet:yes/No gns <https://www.mhc.tn.gov.in/judis> Crl.O.P.(MD)No.13453 of 2024 To

1.The Judicial Magistrate, Ottapidaram.

2.The Inspector of Police, Puliamatti Police Station, Thoothukudi 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.13453 of 2024 K.MURALI SHANKAR,J.

gns Pre-Delivery Order made in Crl.O.P.(MD)No.13453 of 2024 04.10.2024
<https://www.mhc.tn.gov.in/judis>