

ORDER

These petitions are filed by the petitioners/accused persons under Section 482 of Cr.P.C., for quashing the Criminal proceedings registered by the Jagajeevanram Nagar police station in Crime No.70/2020, 71/2020, 72/2020, 73/2020, 74/2020 for the various offences punishable under the IPC sections as well as the Prevention of Destruction and Loss of Property Act, 1981, (hereinafter referred to as 'PDLP Act') and National Disaster Management Act, 2005 (herein after referred to as 'NDM Act'). After investigating the matter, the police have filed different charge sheets against the petitioners in C.C.Nos.12477/2020, 13583/2020, 12821/2020, 12397/2020 and 12506/2020.

2. In Crime No.70/2020, there were 55 accused persons, in Crime No.71/2020, there were 120 accused persons, in Crime No.72/2020, there were 76 accused persons, Crime No.73/2020, there were 68 accused persons and in Crime No.74/2020, there were 55 accused persons.

Most of the accused persons are common accused in all the cases.

3. The case of the prosecution in all these cases is that on 19.4.2020 between 6.30 p.m. to 6.50 p.m., when the BBMP officials went to secure 58 corona infected persons, at that time the accused persons formed unlawful assembly, armed with knife, club and rods with an intention to spread corona infection in Padarayanpura and had obstructed the area, where the Asha workers, Medical Officers belonging to BBMP, were lawfully discharging their official duty. The accused persons caused damage to the public property by breaking chairs, tables, tents at 10th cross, Arfathnagar. Thereafter, they went to other adjacent roads, in total 5 different roads and they caused damages. Therefore, the police officials have filed the suo-motu complaint against the accused/petitioners in 5 different complaints against the accused persons.

4. In CrI.P.No.5832/2022, the police lodged complaint in Crime No.70/2020 pending in C.C.NO.12477/2020, on the

file of 37th ACMM, Bengaluru, for the offences punishable under Sections 143, 147, 148, 353, 332, 269, 271 read with 149 of IPC, sections 3 and 4 of PDLP Act and Section 51(B) of NDM Act, against 61 accused persons, out of which the petitioners in this petition are accused Nos.7 to 61 (total 55 accused persons).

5. The CrI.P.No.1008/2021 (accused No.2) and CrI.P.No.5893/2022 (accused Nos.7 to 126) filed arising out of Crime No.71/2020, in C.C.No.13583/2020 pending on the file of 37th ACMM, Bengaluru, for the offences punishable under Sections 143, 147, 148, 307, 201, 353, 333, 323, 324, 506, 269, 271, 188 read with 149 of IPC and sections 3 and 4 of PDLP Act and section 51(B) of NDM Act, totally 126 accused persons mentioned in the FIR, out of which accused No.2 and accused Nos.7 to 126 have filed this petition (total 121 accused persons).

6. In CrI.P.No.5799/2022, the complaint was filed in Crime No.72/2020 in C.C.No.12821/2020, on the file of 37th

ACMM, Bengaluru, for the offences punishable under Sections 143, 147, 148, 353, 332, 506, 269, 271, 188 read with 149 of IPC, sections 3 and 4 of PDLP Act and section 51(B) of NDM Act, totally 82 accused, out of them accused Nos.7 to 82 have filed this petition. In total, 76 persons have filed this petition.

7. In CrI.P.No.5913/2022 (accused Nos.7 to 73) and CrI.P.No.552/2021 (accused No.2) the complaint filed in Crime No.73/2020 in C.C.No.12397/2022, on the file of 37th ACMM, Bengaluru, for the offences punishable under Sections 143, 147, 148, 353, 332, 506, 269, 271, 188 read with 149 of IPC, sections 3 and 4 of PDLP Act and section 51(B) of NDM Act, totally 73 accused persons registered as per FIR, out of them accused No.2 and accused Nos.7 to 73, totally 68 persons have filed this petition.

8. In CrI.P.No.5821/2022 (accused Nos.7 to 61), the complaint filed in Crime No.74/2020, pending in C.C.No.12506/2020 on the file of 37th ACMM, Bengaluru, for the offences punishable under Sections 143, 147, 148, 353,

332, 269, 271 read with 149 of IPC, sections 3 and 4 of PDLP Act and section 51(B) of NDM Act, totally 61 accused out of them, accused Nos.7 to 61 filed this petition totally, 55 persons have filed this petition.

9. The petitioners being aggrieved with filing of the charge sheet, filed these petitions challenging the charge sheet contending that after registering the FIR, the police arrested the petitioners, and that they are innocent public who do not have any connection with the case. Also, their houses are different places, therefore, without identifying the real culprits, the police have blindly registered the case against these petitioners. He further contended that the BBMP officials did not come with clean hands to secure corona infected persons. There is no list of infected persons in order to quarantine them, they have not narrated the names of the officials or patients or receipt of any information regarding corona patients. There was no wound or injury sustained by any of the persons in order to attract Section 307 of the IPC. There was delay in getting MLC.

They have taken treatment in private clinic, though Government Hospital is situated in front of the police station. The CCTV footage does not reveal any incriminating materials found against the petitioners and nothing were seized. There is no Test Identification Parade conducted by the police. None of the offences alleged would attract the provisions. Further it is contended, the statement of witnesses are stereotype statements. Though the police have filed that more than 120 accused persons were involved, but no property has been damaged, which was seized by the police. Hence, prayed for quashing the Criminal proceedings.

10. Learned counsel also contended as per the allegations, it appears there is only one offence which has been committed, but the police have registered 5 different FIRs in the same police station against the same accused persons for the same cause of action. Therefore, the criminal prosecutions against the petitioners are liable to be quashed.

11. Learned counsel further contended, the very prosecution is liable to be quashed, there is a bar under Section 195 (1) a) of Cr.P.C., where the Government officials are required to file private complaint, in respect of violation of the provisions of Sections 172 to 188 of IPC and Disaster Management Act. In support of his contention, he has relied upon the judgment of the Hon'ble Supreme Court as well as this Court reported in **(1981) 2 SCC 185** in case of **State of Karnataka Vs Hemareddy @ Vemareddy and Anr.** Also relied on another case in **W.P.No.13328/2018 (GM-RES)** in case of **Rajashekharanada Swamiji and Anr Vs State of Karnataka)** and in case of **Mahesh@Mahesha M., and Ors Vs State** in **Crl.P.No.9153/2022** and other cases.

12. Per contra, learned Addl.SPP has seriously objected the petition contending that the police have registered 5 different FIRs against various accused persons and most of the accused persons are common in all the FIRs. The time of offence as well as place of offence are

altogether different where the first offence was committed at 10th cross, wherein the complainant was one Venkatesh police constable, in Crime No.0070/2020 the offence was committed at 7.10 p.m. In second case, Crime No.71/2020, the FIR was lodged by one PSI Raman Gowda the alleged offence was committed at 7.20 p.m., at 11th Cross, Padarayanapura, Bengaluru. In Crime No.72/2020 the complainant was one Gajendra, Head Constable and the alleged offence was committed at 12th cross Padrayanapura, Bengaluru and the offence was committed at 7.30 p.m.. In Crime No.73/2020 the complainant was one Dadapeer, Head constable and the alleged offence was committed at 11th cross, Padarayanapura and the time of offence was at 7.40 p.m. In Crime No.74/2020 complainant was Dr.Yogesh and place of incident was 10th cross, West of Padarayanapura, the time of incident was at 6.30 p.m. Learned counsel contended that the different offences committed by the accused persons, in different places at different times and complaint was lodged by different persons. Therefore, it

cannot be considered as one FIR or one incident in order to quash the Criminal proceedings.

13. Learned Addl.SPP has contended that though the offences under Section 188 of IPC, where the private complaint is required to be filed and quashed on the ground, the FIR has been lodged, but the remaining offences for damaging the public properties and causing injury, obstructing the public servants were remaining for prosecution. Therefore, case is required for trial and for framing of charges. Hence, prayed for dismissing the petition.

14. Having heard the arguments, perused the records. The sum and substance of the prosecution case is that, there was Covid-19 lockdown during April-2021 and there were 51 persons who were affected with corona infection and the said houses of the persons were required to be sealed down. Therefore, the BBMP officials, visited the padarayanapura area for sealing down. At that time, these accused persons said to be obstructed them from

discharging official duty and they said to be shown criminal force on them. They said to be damaged the chairs and table kept near the tents erected by the BBMP and they also said to be caused injury to one of the police and the offence is punishable under Section 307 of IPC. Admittedly, all the cases were arising out of series of incidents, at a time, one after the another. However, at different places, the accused persons had committed the offence, at different times and different persons have lodged complaint. There are different FIRs which have been registered in the same police station one after the another. It is also found that some of the accused persons are common, in all the 5 cases and some of them are different accused person in some cases. Accused Nos.1 to 6 were named in the FIR in 4 cases and 5 accused persons were named in one FIR. These petitioners were not named in the FIR, but the names are shown in the charge sheet .

15. The alleged offences mainly attract section 188 of IPC where there was promulgation of the state for Covid-19

lockdown and sealing down the infected area of Corona Virus. Though, the BBMP officials went to the padarayanapura area for sealing down on the ground, that there were 51 persons infected with the corona virus, but in the charge sheet there are no details or names of the corona virus affected persons in order to seal down the area. When the BBMP officials were obstructing the road for sealing down, these petitioners might have agitated against them for sealing down the area, as they were required to come out for purchasing the milk or vegetables or food products for day to day usages, at that time there may be scuffle between them and the alleged incident must have taken place. Therefore, the main offence alleged against accused persons is under Section 188 of IPC and thereafter the remaining offences attracted under the IPC and for violating the order of the Government during the emergency situation or lockdown, in view of the Covi-19 virus. The government passed the order under the Disaster Management Act for lockdown or sealing down the area, therefore, it attracts section 51 of the Disaster Management

Act. As per section 195 of Cr.P.C., there is a bar for taking cognizance by the Magistrate, for the offence punishable under Section 188 of IPC, the relevant section 195 (1)(a)(i) read as under :--

"No court shall take cognizance-

(a)(i) of any offence punishable under sections 172 to 188 (both inclusive) of the Indian Penal Code, 1860 (45 of 1860); or

(ii) xxxxxxxxxxxxxx

(iii) xxxxxxxxxxxxxx

except on the xxxxxxxxxxxxxx;

b)(i) xxxxxxxxxxxxxx court; or

(ii) of any offence described in section 463, or punishable under section 471, section 475 or section 476 of the said Code, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court; or

16. Therefore, in view of the bar under Section 195 (1)(a) (i) of Cr.P.C., for filing the complaint under Section 154 of Cr.P.C for filing the charge sheet and taking cognizance from the Magistrate, apart from that, for the purpose of taking cognizance, offence punishable under

Section 51 (B) of the Disaster Management Act, again there is a bar for taking cognizance on the police report, except on the complaint by the National Authority or State Authority or District Authority, or any other authority shall be authority in this behalf, by that authority or the Government as the case may be, as per section 60 of the Disaster Manager Act, which is as under:-

*"Section 60: **Cognizance of offences.** No court shall take cognizance of an offence under this Act except on a complaint made by-*

(a) the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised in this behalf by that Authority or Government, as the case may be; or

(b) any person who has given notice of not less than thirty days in the manner prescribed, of the alleged offence and his intention to make a complaint to the National Authority, the State Authority, the Central Government, the State Government, the District Authority or any other authority or officer authorised as aforesaid."

17. Therefore, the registered FIR and filing the charge sheet is barred for taking cognizance under Section 195 of Cr.P.C., and section 60 of Disaster Management Act offence

punishable under Section 188 of IPC and section 51 (B) of Disaster Management Act.

18. This court also held in a similar case in **WP NO.10241/2021 dated 4.8.2021** in the case of **Dr.M.K. Pushpitha Vs State of Karnataka** and another. The coordinate benches also taken the similar view in various cases. Now the question that arises to this court, other than the section 188 of IPC and section 51 of Disaster Management Act, is whether prosecution can be continued for the offences punishable under the IPC sections such as 353, 332, 143, 149, 307, 323 of IPC and also damaging the Public Properties Act.

19. The Addl. SPP contended that other than the non cognizable offence, the remaining IPC sections shall be proceeded against the accused persons. In this regard, learned counsel for the petitioner relied upon the judgment of the Hon'ble Supreme Court held in **Bandekar Brothers**

Pvt., Ltd., Vs Prasad Vassudev Keni and Ors reported in
(2020) 20 SCC 1 at paragraph 48 has held as under:

"Equally important to remember that if in the course of the same transaction two separate offences are made out, for one of which section 195 of Cr.P.C is not attracted and it is not possible to split them up, the drill of section 195 (1)(b) Cr.P.C must be followed. Thus in State of Karnataka Vs Hemareddy, this court referred to the judgment of Madras High Court (V.V.L. Narasimhamurthy, In re)"

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8. We agree with the view expressed by the learned Judge and hold that in cases where in the course of the same transaction an offence for which no complaint by a court is necessary under Section 195(1)(b) of the Code of Criminal Procedure and an offence for which a complaint of a court is necessary under that sub-section, are committed, it is not possible to split up and hold that the prosecution of the accused for the offences not mentioned in Section 195(1)(b) of the Code of Criminal Procedure should be upheld."

20. The Hon'ble Supreme Court in view of the judgment of Hon'ble Supreme Court, the coordinate bench

of this Court, also taken the similar view in the case of "**Rajashekhharananada Swamiji**" stated supra that without filing the complaint under Section 2(d) of Cr.P.C., question of filing FIR and charge sheet and taking cognizance cannot be sustained. Therefore, the contention of the learned Addl.SPP to split up IPC cases cannot be acceptable. In order to split up the cognizable IPC cases and quashing the non-cognizable cases and proceed with the trial, is not correct and cannot be acceptable.

Therefore, in view of the judgment of the Hon'ble Supreme Court and bar under the Cr.P.C., as well as Disaster Management Act, the Criminal proceedings against these petitioners in the above 5 cases are liable to be quashed without going to the veracity of the offence committed by the accused, whether one offence or different offences, in different place of occurrence. Hence, petition deserves to be allowed.

Accordingly, all these petitions are **allowed**.

Consequently, the petition filed against the petitioners/accused persons in (i) CrI.P.NO.5832/2022 filed by the accused Nos.7 to 61, in C.C.NO.12477/2020, in Crime No.70/2020;

(ii) In CrI.P.No.1008/2021 filed by accused No.2 and CRL.P.No.5893/2022 filed by the accused Nos.7 to 126 in Crime No.71/2020, in C.C.NO.13583/2020;

(iii) In CrI.P.No.5799/2022, filed by accused Nos.7 to 82, in Crime No.72/2020, in C.C.NO.12821/2020;

(iv) CrI.P.No.552/2021 filed by accused No.2 and CrI.P.No.5913/2022, filed by accused Nos.7 to 73, in Crime No.73/2020, in C.C.NO.12397/2020 and

(v) In CrI.P.No.5821/2022, filed by accused Nos.7 to 61, in Crime No.74/2020 in C.C.NO.12506/2020, all these crimes filed by Jagajeevanram Nagar police station, which are pending on the file of 37th ACMM, Bengaluru, are hereby quashed.

AKV
CT:SK

**Sd/-
JUDGE**