

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 08.12.2021

PRONOUNCED ON: 20.01.2022

CORAM

THE HONOURABLE MR.JUSTICE **K.MURALI SHANKAR**

Crl.O.P.(MD)No.10932 of 2019

and

Crl.M.P.(MD)Nos.6876 and 6877 of 2019

- 1.Palaniyappan
- 2.Alagumanikandan @ Ayyappan
- 3.Magalingam
- 4.Sundaram
- 5.Alagappan
- 6.Karpakavalli
- 7.Jegan
- 8.Kaliyaperumal
- 9.Manimuthu
- 10.Chitra
- 11.Ponnalagu
- 12.Shanthi
- 13.Meenal
- 14.Vellaikannu
- 15.Malliga
- 16.Alagu @ Alaguammal
- 17.Cinnamma
- 18.Chellammal
- 19.Mallika
- 20.Sasikala
- 21.Sengammalam
- 22.Jothi
- 23.Mani @ Ponmani

: Petitioners/Accused Nos.1 to 23

Vs.



State represented by

1. The Inspector of Police,
Kelasevalpatti Police Station,
Sivagangai District.
(Cr.No.103 of 2017)

: 1st Respondent / Complainant

2. Subramanian,
Village Administrative Officer,
43, South Illayathangudi Group,
Illayathangudi,
Thiruppathur Block,
Sivagangai District.

: 2nd Respondent/Defacto complainant

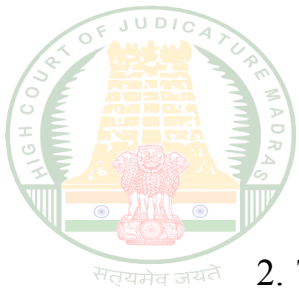
PRAYER : Criminal Original Petition has been filed under Section 482 Cr.P.C, to call for the records pertaining in C.C.No.243 of 2018, in connection with Cr.No.103 of 2017, for the offences under Sections 143, 188, 341 and 353 I.P.C., on the file of the respondent pending before the learned District Munsif-cum-Judicial Magistrate Court, Thirupattur, Sivagangai District and quash the same.

For Petitioners : Mr.R.Ganeshprabu

For Respondents : Mr.R.Sivakumar
Government Advocate(Crl.Side)
for R.1
: No Appearance for R.2

ORDER

This Criminal Original Petition has been filed, invoking Section 482 Cr.P.C., seeking orders to call for the records pertaining to the case in C.C.No. 243 of 2018, pending on the file of the District Munsif-cum-Judicial Magistrate Court, Thirupattur, Sivagangai District and quash the same.



WEB COPY

2. The petitioners 1 to 23 are the accused in C.C.No.243 of 2018, on the file of the District Munsif-cum-Judicial Magistrate Court, Thiruppattur. On the basis of the complaint lodged by the Village Administrative Officer, Illayathangudi Village, Thiruppattur Taluk, second respondent herein, a First Information Report came to be registered in Cr.No.103 of 2017 for the offences under Sections 143, 188, 341 and 353 I.P.C., against 9 named persons and 14 women. The first respondent, after completing the investigation, has laid a final report under Section 173 Cr.P.C., against the petitioners 1 to 23 for the offences under Sections 143, 188, 341 and 353 I.P.C., and the case was taken on file in C.C.No.243 of 2018, on the file of the District Munsif-cum-Judicial Magistrate Court, Thiruppattur.

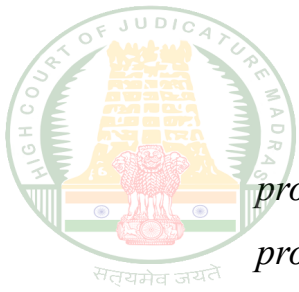
3. The case of the prosecution is that on 29.11.2017 at about 12.00 noon, under the head of the petitioners 1 and 2, all the petitioners were standing in front of the TASMACH shop bearing No.728 situated in Amman Sannathi 1st street, in Keelasevalpatti Village, Illayathangudi Group, Sivagangai District and demanding the closure of the said shop, that the petitioners, without getting necessary permission from the police, had assembled and tried to obstruct the TASMACH workers to do their duty and also disturbed the public and traffic.



4. The learned Counsel for the petitioners would submit that the petitioners had approached the officials in a peaceful manner and asked them to close the TASMACH shop which affects the entire village, that no incident was occurred as alleged by the prosecution, that the petitioners, who are duty bound to protect the villagers, particularly young generation from the influence of alcohol, had requested the authorities to shift the TASMACH shop and that therefore, no offence is made out as against the petitioners. The learned Counsel for the petitioners would further submit that there is a clear bar for taking cognizance of an offence under Section 188 I.P.C., without a complaint, as contemplated under Section 195 Cr.P.C.

5. 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:

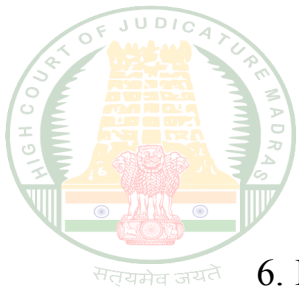
“20. Section 195(a)(i) Cr.PC bars the court from taking cognizance of any offence punishable under Section 188 IPC or abetment or attempt to commit the same, unless, there is a written complaint by the public servant concerned for contempt of his lawful order. The object of this provision is to provide 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



WEB COPY

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).

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](#).”



WEB COPY

6. It is pertinent to note that Section 195 Cr.P.C, bars taking cognizance of any offence punishable under Sections 172 to 188 I.P.C., 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 I.P.C., and the Judicial Magistrate cannot take cognizance of the offence, based on the final report filed under Section 173(2) Cr.P.C.

7. As per the above settled legal position, there must be a complaint by a public servant who is lawfully empowered under Section 195 Cr.P.C., and it is mandatory and that therefore, the non-compliance of the same, will make the proceedings *void ab initio* and as such, the charge sheet laid under Section 188 I.P.C., has to necessarily be quashed.

8. Now coming to the provision of Section 353 I.P.C., the Honourable Apex Court in *Manik Taneja and another Vs. State of Karnataka and another* reported in **(2015)7 Supreme Court Cases 423**, has considered the quashment of



charge sheet for the offence under Section 353 I.P.C. and the relevant passage is extracted as follows:

WEB COPY

“A reading of the above provision shows that the essential ingredients of the offence under [Section 353](#) IPC are that the person accused of the offence should have assaulted the public servant or used criminal force with the intention to prevent or deter the public servant from discharging his duty as such public servant. By perusing the materials available on record, it appears that no force was used by the appellants to commit such an offence. There is absolutely nothing on record to show that the appellants either assaulted the respondents or used criminal force to prevent the second respondent from discharging his official duty. Taking the uncontroverted allegations, in our view, that the ingredients of the offence under [Section 353](#) IPC are not made out.”

9. In the case on hand, there is no allegation that the petitioners have assaulted the TASMAL staffs or any other persons or used criminal force with an intention to prevent or deter the TASMAL staffs from discharging their duty. Considering the uncontroverted allegations, this Court has no other option but to say that the ingredients of the offence under Section 353 I.P.C., are not made out.



10. Now turning to the offences under Sections 143 and 341 I.P.C., it is necessary to refer the following passages in **Jeevanandham's case** above referred.

WEB COPY

“32.....

2.In all the cases, the assembly of persons were expressing dissatisfaction on the governance and claiming for minimum rights that are guaranteed to an ordinary citizen. If such an assembly of persons are to be trifled by registering an FIR under [Section 143](#) of IPC and filing a Final Report for the very same offence, no democratic dissent can ever be shown by the citizens and such prohibition will amount to violation of fundamental rights guaranteed under the Constitution. A reading of the Final Report also does not make out an offence under [Section 341](#) of Cr.P.C since any form of an agitation, will necessarily cause some hindrance to the movement of the general public for sometime. That by itself, does not constitute an offence of a wrongful restraint.

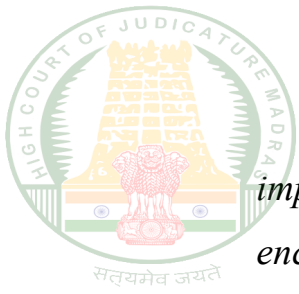
11. As rightly held by this Court in **Jeevanandham's case**, the violation of Section 30(2) of the Police Act will not constitute an offence under Section 143 I.P.C., as an order passed under Section 30(2) of the Police Act is only regulatory in nature, by which, the police cannot prohibit any agitations. The prosecution in order to invoke Section 341 I.P.C., has to establish that a person voluntarily obstructed any person so as to prevent that person from proceeding in any direction in which a person has a right to proceed. In the case on hand, as already pointed out, the petitioners have assembled and conducted an agitation to shift the TASMACH



shop and there is absolutely no material to show that they have voluntarily obstructed any person. Even assuming that there existed some hindrance for the movement of the general public for some time, as rightly held in **Jeevanandham's case**, that by itself does not constitute an offence of wrongful restraint. Considering the above, this Court has no hesitation to hold that the final report does not make out any offence of the wrongful restraint.

12. As already pointed out, the purpose of agitation is to close the TASMACH shop and shift the same from that place. No doubt, the prohibition is a policy matter to be decided by the Government. But, at the same time, the policy of prohibition is a constitutional mandate and the Government is having greater responsibility to function in larger public interest. The Honourable Supreme Court in **Re-Ramlila Maidan Incident dated.4/5.06.2011 vs Home Secretary, Union of India And Ors** reported in **(2012)5 SCC 1**, has observed that the dharnas and agitations are the basic features of the democratic system and the relevant passage is extract hereunder;

“245. Freedom of speech, right to assemble and demonstrate by holding dharnas and peaceful agitations are the basic features of a democratic system. The people of a democratic country like ours have a right to raise their voice against the decisions and actions of the Government or even to express their resentment over the actions of the Government on any subject of social or national



WEB COPY

importance. The Government has to respect and, in fact, encourage exercise of such rights. It is the abundant duty of the State to aid the exercise of the right to freedom of speech as understood in its comprehensive sense and not to throttle or frustrate exercise of such rights by exercising its executive or legislative powers and passing orders or taking action in that direction in the name of reasonable restrictions. The preventive steps should be founded on actual and prominent threat endangering public order and tranquility, as it may disturb the social order. This delegate power vested in the State has to be exercised with great caution and free from arbitrariness. It must serve the ends of the constitutional rights rather than to subvert them.”

13. In the case on hand, even according to the prosecution, the petitioners have not indulged in any act of violence. According to the petitioners, out of 23 accused, 14 accused are women and four accused are senior citizens. Considering the above, this Court has no hesitation to hold that the impugned proceedings in C.C.No.243 of 2018, pending on the file of the District Munsif-cum-Judicial Magistrate Court, Thiruppattur, Sivagangai District, are liable to be quashed.

14. In the result, this Criminal Original Petition is allowed and the impugned proceedings in C.C.No.243 of 2018, pending on the file of the District Munsif-cum-Judicial Magistrate Court, Thiruppattur, Sivagangai



District, as against the petitioners are quashed. Consequently the connected Miscellaneous Petitions are closed.

WEB COPY

20.01.2022

Index : Yes/No

Internet : Yes/No

SSL

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The District Munsif-cum-Judicial Magistrate Court,
Thiruppattur, Sivagangai District.
2. The Inspector of Police,
Kelasevalpatti Police Station,
Sivagangai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



K.MURALI SHANKAR, J.

WEB COPY

SSL

PRE-DELIVERY ORDER MADE IN

Crl.O.P.(MD)No.10932 of 2019

20.01.2022