



Crl.O.P.Nos.16043,16230 of 2023 and
Crl.O.P.No.1270 of 2024

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: :05.08.2024

Pronounced on :13.08.2024

Coram:

THE HONOURABLE DR. JUSTICE G. JAYACHANDRAN

Crl.O.P.Nos.16043,16230 of 2023 and
Crl.O.P.No.1270 of 2024 and
Crl.M.P.Nos.10061, 10245 of 2023 and
Crl.M.P.Nos.922 & 926 of 2024

Crl.O.P.No.16043 of 2023:

C.Ve.Shanmugam, B.A.B.L., .. Petitioner/Accused No.1

/versus/

1.State rep.by Inspector of Police,
Villupuram West Police Station,
Villupuram District.

Crime No.194 of 2022 ..1st respondent/Complainant

2.Shanmugha Sundaram .. 2nd respondent/Defacto
Complainant

Criminal Original Petition has been filed under Section 482 of
Cr.P.C., to call for the records and quash the case in Crime No.194 of
2022 on the file of the Villupuram West Police Station.



CrI.O.P.Nos.16043,16230 of 2023 and
CrI.O.P.No.1270 of 2024

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For Petitioner :Mr.R.John Sathyan,Senior Counsel for
Mr.M.Mohamed Riyaz

For R1 :Mr.K.M.D.Muhilan,
Govt.Advocate (CrI.Side)

For R2 :No appearance

CrI.O.P.No.16230 of 2023:

C.Ve.Shanmugam, B.A.B.L.,
Member of Parliament

.. Petitioner/Accused No.1

/versus/

1.State rep.by Inspector of Police,
Villupuram West Police Station,
Villupuram District.
(Crime No.51 of 2022)

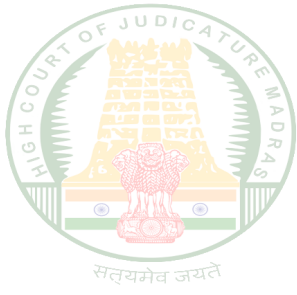
..1st respondent/Complainant

2.Karthikeyan
V.A.O
Villupuram Town

.. 2nd respondent/Defacto
Complainant

Criminal Original Petition has been filed under Section 482 of
Cr.P.C., to call for the records and quash the case in Crime No.51 of 2022
on the file of the Villupuram West Police Station.

For Petitioner :Mr.R.John Sathyan,Senior Counsel for



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Mr.M.Mohamed Riyaz

For R1 :Mr.K.M.D.Muhilan,
Govt.Advocate (Crl.Side)

For R2 :No appearance

Crl.O.P.No.1270 of 2024:

C.Ve.Shanmugam, B.A.B.L., .. Petitioner/Accused No.1

/versus/

1.State rep.by Inspector of Police,
Villupuram West Police Station,
Villupuram District.
(Crime No.194 of 2022) ..1st respondent/Complainant

2.Mr.Shanmugha Sundaram .. 2nd respondent/Defacto
Complainant

Criminal Original Petition has been filed under Section 482 of
Cr.P.C., to call for the records and quash the proceedings against the
petitioner in STC No.1167 of 2023 on the file of the Judicial Magistrate
No.1, Villupuram.

For Petitioner :Mr.R.John Sathyan,Senior Counsel for
Mr.M.Mohamed Riyaz

For R1 :Mr.K.M.D.Muhilan,
Govt.Advocate (Crl.Side)

For R2 :No appearance

COMMON ORDER



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On 28.02.2022 at about 10.00 a.m., near Thiruvallur Statue, Villupuram Old Bus stand, agitation was organised by AIADMK party condemning the arrest of Mr.D.Jayakumar, Former Minister. In the said agitation, the petitioner and others spoke. Nearly 1500 men and 200 women participated in the agitation.

2. The second respondent, Karthikeyan, the Village Administrative Officer of Villupuram Town, gave a written complaint on the same day i.e 28/02/2022 to the Sub-Inspector of Police, Villupuram West Police Station stating that without obtaining permission from the Police, the agitation condemning the arrest of Mr.D.Jayakumar, was conducted under the leadership of the petitioner C.Ve.Shanmugam. The agitation caused disturbance to the flow of traffic in the Villupuram - Pondicherry National Highways. The general public were put to great hardship. Without following the corona protocol, the agitators gathered between 10.00 am and 12.00 noon facilitating the spread of infectious virus. For the unlawful assembly, wrongful restraint, negligent act likely



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to spread infection of disease dangerous to like, malignant act likely to spread infection of disease dangerous to life and public nuisance complaint in Crime No.51 of 2022 registered for the offences under Sections 143, 341, 269, 270, 290 of IPC, against the agitators led by petitioner Mr.C.Ve.Shanmugam along with 14 office bearers of AIADMK party and 1500 men and 200 women,

3. For the very same incident, on 07/10/2022 (i.e) about 7 months, one Mr.Shanmugha Sundaram, a office bearer of DMK party gave a complaint, alleging that the petitioner herein, a sitting Member of Parliament/Former Minister of Tamil Nadu Government, had delivered speech in the protest meeting, which was in the nature of giving provocation with intent to cause riot and made with intent to provoke breach of peace. Further, it was obscene. This complaint was registered by the very same police in Crime No.194 of 2022 on 07.10.2022 for the offences under Sections 153A, 294(b), 504 and 505(1)(b) of IPC.

4. The petitioner filed Crl.O.P.No.16043 of 2023 to quash the



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WEB COPY complaint in Crime No:194/2022 given by Shanmuga Sundaram.

Crl.O.P.No:16230/2023 to quash the complaint in Crime No.51 of 2022 given by Karthikeyan, Village Administrative Officer.

5. This Court in Crl.O.P.No.16043/2023 vide order dated 20.07.2023 granted stay of filing final report pending disposal of the petition. However, even before the date of the stay order, the Investigating Officer completed the investigation and filed final report before the Judicial Magistrate No.1, Villupuram on 15.06.2023. The report was taken on file by the Judicial Magistrate No.1, Villupuram and assigned S.T.C.No.1167 of 2023. Hence, the third petition for quash the final report was filed by the petitioner, which is the subject matter of the Crl.O.P.No.1270 of 2024.

6. Thus, a complaint by the Village Administrative Officer for unlawful assembly without permission during Covid-19 restriction in Crime No:51/2022 for the offences under Sections 143,341,269,270, and 290 of IPC; and a complaint given 8 months later by a private individual



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by name Shanmuga sundaram who belongs to the ruling party alleging objectional speech by the petitioner C.Ve.Shanmugam registered in Crime No.194 of 2022 under Sections 294(b), 504 and 153A and 505 (1)(b) IPC by the same police (Villupuram West).

7. Later, the complaint of the private person registered in Crime No:194/2022 was investigated and the final report filed before the Judicial Magistrate No.1, Villupuram. The Learned Judicial Magistrate has taken cognizance of the offences and issued summons to the petitioner in S.T.C.No.1167 of 2023.

8. The learned Senior Counsel appearing for the petitioner submitted that for one occurrence, two complaints on two different dates registered by the same police. The first one from the public servant (VAO) and second complaint from the ruling party member by the same police, with different set of offences. Without proceeding with the earlier complaint, the Investigating Officer proceeded with the subsequent complaint given 8 months later and filed final report.



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9. In the final report filed in the subsequent complaint, Karthikeyan, Village Administrative Officer, who is the complainant in the first complaint not even shown as a witness. Neither his statement was recorded by the Investigating Officer, though the complaint of Karthikeyan under investigation by the same police. This apparently expose the illegality in the investigation process adopted by the respondent Police. The registration of the subsequent complaint in Cr.No:194/2022 and consequentially filing the final report in Cr.No:194/2022 based on the statements of party-men of the complainant is illegal and contrary to the Cr.P.C.

10. The Learned Senior Counsel appearing for the petitioner submitted that any information received by the Police about commission of cognizable offence, is bound to be registered under Section 154 of Cr.P.C. Such information received is called the First Information. The subsequent informations about the said cognizable offences, should be part of the First and earlier Information. Law does not permits a Station



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House Officer to register multiple First Information Reports (FIRs) for the same occurrence, unless it is complaint and complaint-in-counter.

11. The FIR in the instant case is the complaint by the Village Administrative Officer, who is a public servant. His complaint given immediately after the occurrence, came to be registered on the same day of occurrence, The offences spelt out in this complaints are Sections 143, 341, 269, 270, 290 of IPC. In this complaint, 15 named persons and unknown 1500 men and 200 women are shown as accused. After registering FIR for the alleged offences under Sections 143, 341, 269, 270, 290 of IPC, there cannot be a second FIR for the same transaction on the information by a private individual alleging few more cognizable offences.

12. The police for political reasons, taken the statement from a private person and had registered the second complaint in Crime No.194/2022 on an invented allegation of objectionable speech, which is not found in the first complaint by the Village Administrative Officer.



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13. The complaint given by a private person 8 months after the occurrence was admittedly given after consultation with the party members. Despite that the respondent police has entertained the complaint to register second FIR, ignoring the First Information about the same meeting given by the Public Servant (VAO). The second complaint which centers around the speech delivered by the petitioner, was entertained by the police without any direct or indirect evidence. The recorded speech or the authenticated manuscript of the alleged speech not find place in the final report filed by the police.

14. The Learned Senior Counsel appearing for the petitioner further submitted that the complaint in Crime No:194/2022 under Sections 294(b), 504 and 153A and 505(1)(b) of IPC is not maintainable since the complaint does not disclose necessary ingredients to charge the petitioner for the said offence, further there cannot be two First Information Reports for the same incident before the same police against the same person. Without investigating the earlier complaint, the



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WEB COPY investigation in the subsequent complaint hurriedly been completed and Final Report filed without even reference to the first complaint. The final report is not supported by any material evidence to disclose commission of offence punishable under Sections 294(b), 504 and 153 of IPC.

15. The learned Senior Counsel appearing for the petitioner submitted that the petitioner is a sitting Member of Parliament and also the District Secretary of AIADMK party, which is the party in opposition. Contemning the illegal arrest of one of the former Minister namely, Mr.D.Jayakumar, hunger strike was organised by his party-men in which the petitioner spoke about the legitimate grievance of the general public suffered by them due to the mal-administration of the Government. The failure to carry out the desalination plan project to provide 60 million litres of water per day for 692 rural habitations besides urban areas introduced at the cost of Rs.1,502.72 crore by the erstwhile Government was highlighted in his speech. The illegal arrest of Mr.D.Jayakumar,(former Minister) by the police was highlighted. The petitioner condemned the action of the police and call them as Ruling



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16. According to the Learned Senior Counsel appearing for the petitioner, the first complaint by VAO do not say any objectionable in the speech of the petitioner. The respondent police after realising noting incriminating is available in that complaint for investigation against the petitioner, to harass the petitioner had initiated the second complaint. The first complaint given by the informant Karthikeyan, a public servant/ Village Administrative Officer having failed to make out a case against the petitioner, on the instruction and instigation of the ruling party leaders, had set up their party man to give the second complaint. He a private individual, on consultation of his party men had given the complaint after 8 months with averments without any supporting evidence.

17. Contending that the malicious act of the police entertaining



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superseding the earlier complaint and entertaining subsequent complaint from the ruling party man, is misuse of police force to throttle the voice of the opposition. The undemocratic way of functioning by the party in power misusing the police is very apparent.

18. Per contra, the Learned Government Advocate (Criminal Side) submitted that, this petitioner is an habitual offender, committing crime of inciting violence by his provocative speech. The tenor of his speech will clearly show that he have scant respect to decency and good manners. The VAO, who lodged the complaint in Cr.No:51/2022 was concerned only about the violation of prohibitory order and violation of Covid protocol. The unlawful assembly gathered without prior permission was the matter of concern for the VAO. Endangering the life of the public getting exposed to infectious disease was his concern, hence his complaint was about the violation which attract offences under Sections 143, 341, 269, 270 and 290 of IPC.

19. Whereas the second complaint which is subject matter of

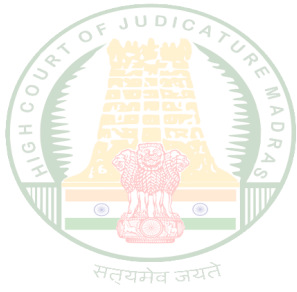


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WEB COPY Cr.No:194/2022 is about the speech delivered by the petitioner in the protest meeting which was in the nature of provoking the breach of peace. The speech which was in the nature of giving provocation wantonly with intent to cause riot and further utterance of obscene words in the public against the Chief Minister and his father who was former Chief Minister of this State. Hence, justifying the registration of the second FIR on a different set of fact, state that there is no illegality or malicious prosecution in registering the second FIR and investigate.

20. The Learned Government Advocate,(CrI.Side) pleaded that in exceptional circumstances, there is no bar to register multiple FIRs. Even assuming the registration of second FIR is not warranted in this case, the fact that has been brought to the notice of the investigation officer about the commission of other cognizable offences, which was not disclosed in the earlier complaint, the police is duty bound to investigate those allegations and cannot ignore the said new information and allow the violator of law to go free.

21. In so far as the plea in the petition CrI.O.P.No:16043/2023



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and Crl.O.P.No:1270/2024 which are filed to quash Cr.No:194/2022 and the consequential final report taken cognizance in S.T.C.No.1167/2023, the contention of the Learned Government Advocate is that, the speech of the petitioner had caused annoyance to the complainant and his party-men. By his provocative speech claiming that they are not Jesus to show the other cheek, if slapped on one cheek, but they will retaliate, is an utterance made with intention to create a riotous situation.

22.The allegation that the ruling party is interfering with the function of judiciary is also baseless and it was said with intention to cause breach of peace. The speech of the petitioner read cumulatively, clear prove that it was made wantonly with an intention to provoke and incite violence. His speech will not come under the protective umbrella of freedom of speech or fair comment about the ruling dispensation.

23. On hearing the submissions of the respective counsels, the following points for consideration arise: -

(a)Whether gathering of petitioner and others between 10.00



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am to 12.00 noon on 28/02/2022 near Old Bus Stand, Villupuram Town without proper permission from the Police and for causing disturbance to the free flow of vehicular traffic and public will constitute commission of offences u/s 143, 341, 269, 270 and 290 of IPC.?

(b) Whether for the same incident registration of second FIR in Cr.No:194/2022 after 8 months, on the information of a private individual by name Shanmuga Sundaram is legally sustainable and whether the allegation made in this complaint about the utterance made by the petitioner will attract offences u/s 294(b), 153 and 504 IPC ?

(c) Whether in this case, the Police machinery misused as a tool by the ruling party to crush the voice of opposition by registering these cases against the petitioner, for the Court to interfere in the investigation applying the dictum laid in "*Bajanlal's case*" ?

Point: a)

As per the complaint of VAO, the FIR in Crime No:51/2022, was registered under Sections 143, 341,269,270 and 290 IPC. These sections in nutshell deals with offences like; assembly of 5 or more



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persons with a common object to overawe the Government by criminal force or show of criminal force against a public servant. Next, against persons who does an unlawful / negligent act of intentional spread of infection, dangerous to life and does any malignant act with intention to spread infection disease dangerous to life. Lastly, causing public nuisance.

Sections 143 of I.P.C

Punishment.—Whoever is a member of an unlawful assembly, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Section: 341 of I.P.C

Punishment for wrongful restraint.—Whoever wrongfully restrains any person shall be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to five hundred rupees, or with both.

Section: 269 of I.P.C

Negligent act likely to spread infection of disease dangerous to life.—Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to



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be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

Section: 270 of I.P.C

Malignant act likely to spread infection of disease dangerous to life.—Whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

Section: 290 I.P.C

Punishment for public nuisance in cases not otherwise provided for.—Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees.

24. Whereas, the complaint by the VAO discloses only facts such as the petitioner and others gathered near the Old Bus Stand, Villupuram without prior permission and disturbed free flow of the vehicles and nuisance to public. Thereby, breached Government protocol issued during the Corona epidemic.



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25. In the first FIR, the informant Mr. Karthikeyan states that the previous day he along with his Assistant on receipt of the information that there is a gathering by the petitioner and other without police permission went to the spot. Whereas in the printed FIR we find, the date of complaint and date of incident is one and the same. The allegation or information found in the complaint is nothing about offences covered under the sections for which the petitioners and others booked. If, there was any disturbance to the public and vehicular movement, why police waited for a day for the VAO to come to the station and inform them about the incident, is a question which has no answer. The reference in the complaint of VAO that he is reporting about the previous day incident is not an inadvertent error, but strong element to suspect that the police had received the complaint from VAO only on the next day of occurrence, but had antedated the complaint and registration of FIR. Further, the complaint says, gathering was to condemn the malicious action of the ruling party arresting the Former Minister Mr.D.Jayakumar. Nowhere in the complaint of VAO, there is any indication that the members under the leadership of the petitioner C.Ve.Shanmugam, gathered with a common



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object to overawe the government using criminal force or show of criminal force against a public servant from exercising his lawful power.

26. The alleged violation of the corona protocol referred in the complainant, does not mean that the petitioner and other gathered and done an act negligently or unlawfully to spread infectious disease dangerous to life. Neither the complaint say, that they gathered and done some act knowingly or reasons to believe that their gathering is likely to spread the infection.

27. The date of incident is almost one year after the lifting of lockdown and total relaxation of the restrictions imposed under the Covid 19 Protocol. To attract Section 269 IPC or Section 270 IPC there must be an overt act to spread the infectious disease. For that first, either the petitioner or any of the member in the assemble ought to have been suffering from infectious disease. Next, that person must had intentionally or negligently or malignantly done an act with knowledge or an act likely to spread the infectious disease.



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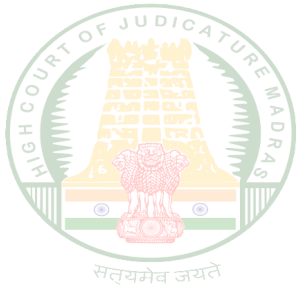
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28. The complaint of VAO in Cr.No.51/2022 to attract Section 269 IPC., the ingredients required are:

- a) the person (s) must suffer an infection,
- b) he must have done an act negligently or unlawfully to spread that infection to others.
- c) the said infectious disease must likely to cause danger to the life.

29. Therefore, to attract Section 269 IPC, malignant intention is not required. Negligent or unlawful act is sufficient. However to attract Section 270 of IPC, the culpable mental state to spread the infectious disease intentionally is necessary. Both these two sections cannot go together.

30. The reading of the FIR in Cr.No: 51/2022 which is apparently an ante-dated one, does not disclose any of the ingredients which is essential to attract Section 269 or 270 of IPC.



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31. Lastly, Section 341 IPC alleging wrongful restraint and the omnibus Section 290 IPC for public nuisance are concern, for wrongful restraint, voluntary obstruction of a person from proceeding in any direction in which he has right to proceed must be mentioned. In his complaint, VAO has not said anything about the obstruction from proceeding from any direction. His complaint says that due to the gathering there was disturbance in vehicular movement and public were put to inconvenience. These allegations does not satisfies the ingredients required to charge a person for Section 341 or Section 290 IPC.

32. At this juncture it is also pertinent to take note that, the content of the complaint in Crime No.51/2022, dated 28/02/2022 or the name of the complainant Karthikeyan VAO, is not found in list of documents or in the list of prosecution witnesses which accompany the final report filed in Crime No:194/2022, which came to be registered by the same police on 07/10/2022 for offences under Sections 294(b), 504 and 153 of IPC.



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33. In the later complaint there is nothing about use of criminal force or criminal restraint or spread of infectious disease or public nuisance. The respondent police had ignored the earlier complaint and the first FIR. It took up the investigation in the later case and and concluded it. The final report, taken on file by the Judicial Magistrate in S.T.C.No.1167/2023.

34. From the above discussion, it is clear that neither in the complaint of the VAO-Karthikeyan nor in the subsequent investigation done in the second complaint of Shanmuga sundaram registered in Crime No.194/2022, the required ingredients for offences under Sections 143,341,269,270 and 290 is present.

35. Even if the gathering without prior permission and the alleged inconvenience mentioned in the complaint assumed to be true and proved, it will not attract offences under Sections 143,341,269,270 and 290 IPC.



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36. The Learned Government Advocate (Cri Side) appearing for the State, submit that, since the investigation in Cr.No:51/2022 is still under investigation, the respondent police be permitted to file alteration of charge and file final report under appropriate Sections.

37. For the same incident, the respondent had already filed a final report in Cr.No:194/2022 and taken on file as S.T.C.No.1167/2023. This is a complaint registered and investigated on the statement given by a private individual containing a set of facts which is not whispered in Cr.No:51/2022. Therefore, after concluded of their investigation about the incident occurred on 28/02/2002 and after final report in Cr.No.194/2022 filed, allowing investigation to continue on the earlier complaint will lead to miscarriage of justice.

38. Hence, this Court holds that mere gathering to protest between 10.00 am to 12.00 noon on 28/02/2022 near Old Bus Stand, Villupuram Town do not constitute commission of offences u/s 143, 341, 269, 270 and 290 IPC.



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39. Since the offences for which the FIR in Cr.No.51/2022 registered is not made out, CrI.O.P.No.16230/2023 to quash Cr.No:51/2022 on the file of the first respondent police is allowed.

Point b):

Crime No:51/2022 and Crime No:194/2022 are about the same incident. The accused in the first complaint are the petitioner along with 14 named persons and nearly 1700 unnamed men and women. They all alleged as members of AIADMK party, which is in opposition. The first FIR is on the information given by a public servant. It was purportedly to have been registered on the same day of occurrence. The second complaint dated 07/10/2022 is by a man who belongs to the ruling party. In both the complaints, it is stated that the accused persons gathered to protest the arrest of Thiru.D.Jayakumar a former Minister of their party. In the second complaint, after extracting the offensive portion of the speech allegedly made by the petitioner, it is stated that the petitioner made these speech i) with intention to create a riotous situation, ii) to



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incite public to indulge violence against the State. iii) the speech of the petitioner caused unrest among the members of the ruling party. iv) since the petitioner been repeatedly making speech of this kind, the party members met and decided to lodge complaint.

40. The reading of the complaint and the statements of witnesses relied by the prosecution in the trial, does not disclose how the speech of the petitioner was intend to incite or create a riotous situation or likely to cause a riotous situation. notwithstanding the trite law that the second complaint cannot be registered for the same incident when the first complaint pending investigation and the second complaint is not a counter complaint but against the same person and for same incident,

41. The second complaint given about 8 months after the incident before the police who had already registered the case and investigating taken up as new case. The reason for the belated complaint as found in the complaint is, it took time for the complainant to consult his party men and after getting their opinion and instruction he gave the



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42. At this juncture it again emphasised that there cannot be multiple complaints for same occurrence. After registering the complaint of the VAO as First Information, there cannot be any further FIR for the same incident or transaction. All other complaints about the same transaction against same person or group of persons has to taken as statements of witnesses.

43. To buttress this view, the following Judgments of the Supreme Court is relied. In these judgments the Apex Court while holding that for the same transaction there cannot be two FIR's, had also illustrated when a second complaint for same transaction be entertained.

(i) T.T.Antony -vs- State of Kerala and others reported in (2001) 6 SCC 181.

27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that sub-section (8) of Section 173



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CrPC empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narang case [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) CrPC. It would clearly be beyond the purview of Sections 154 and 156 CrPC, nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 CrPC or under Articles 226/227 of the Constitution.

44. The law laid in T.T.Antony case rendered by referring **Ramlal Narang case (AIR 1979 SC 1791)** was doubted by two learned judges of the Supreme Court about its correctness, hence referred it to a larger bench in **Upkar Singh -vs- Ved Prakash and others** reported in



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WEB COPY (2004) 13 SCC 292.

45. In Upkar Singh case, the Hon'ble Supreme Court, clarified the legal position by stating, that there can be second FIR for the same incident, if later complaint is filed as counter to the former complaint by the accused person or on behalf of the person accused in the former complaint. The Apex Court in Upkar Singh case cited supra held that :-

17. It is clear from the words emphasised hereinabove in the above quotation, this Court in the case of T.T. Antony v. State of Kerala [(2001) 6 SCC 181 : 2001 SCC (Cri) 1048] has not excluded the registration of a complaint in the nature of a counter-case from the purview of the Code. In our opinion, this Court in that case only held that any further complaint by the same complainant or others against the same accused, subsequent to the registration of a case, is prohibited under the Code because an investigation in this regard would have already started and further complaint against the same accused will amount to an improvement on the facts mentioned in the original complaint, hence will be prohibited under Section 162 of the Code. This prohibition noticed by this Court, in our opinion, does not apply to counter-complaint by the accused in the first complaint or on his behalf alleging a different version of the said incident.



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46. In *Babubhai -vs- State of Gujarat and others* reported in (2010) 12 SCC 254, the issue of filing more than one FIR came again for test. In this judgment the Apex Court, after referring all the earlier judgments of the Hon'ble Supreme Court including the case of *Upkar Singh* cited above held that in case of subsequent FIR, the court has to examine the facts and circumstances giving rise to both the FIR. The test of sameness to be applied. If both the FIRs relate to same incident in respect of same occurrence or are in regard to the incidents which are two or more parts of the same transaction. The second FIR is liable to be quashed.

20. Thus, in view of the above, the law on the subject emerges to the effect that an FIR under Section 154 CrPC is a very important document. It is the first information of a cognizable offence recorded by the officer in charge of the police station. It sets the machinery of criminal law in motion and marks the commencement of the investigation which ends with the formation of an opinion under Section 169 or 170 CrPC, as the case may be, and forwarding of a police report under Section 173 CrPC. Thus, it is quite possible that more than one piece of information be given to the police officer in charge of the police station in respect of the



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same incident involving one or more than one cognizable offences. In such a case, he need not enter each piece of information in the diary. All other information given orally or in writing after the commencement of the investigation into the facts mentioned in the first information report will be statements falling under Section 162 CrPC.

21. In such a case the court has to examine the facts and circumstances giving rise to both the FIRs and the test of sameness is to be applied to find out whether both the FIRs relate to the same incident in respect of the same occurrence or are in regard to the incidents which are two or more parts of the same transaction. If the answer is in the affirmative, the second FIR is liable to be quashed. However, in case, the contrary is proved, where the version in the second FIR is different and they are in respect of the two different incidents/crimes, the second FIR is permissible. In case in respect of the same incident the accused in the first FIR comes forward with a different version or counterclaim, investigation on both the FIRs has to be conducted.

47. Thus, it is amply made clear by these judgments that there cannot be two FIRs for same transaction against same person by two different or same person. Exception is the second FIR with a rival version to the first FIR and in the nature of counter complaint. In all other cases the subsequent complainant shall not fall under Section 154 Cr.P.C but



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WEB COPY under Section 162 Cr.P.C.

48. The dictum laid in Upkar Singh case (cited supra) reiterated in *Surender Kaushik -vs- State of Uttar Pradesh* reported in (2013) 5 SCC 148 in the following terms:-

24. From the aforesaid decisions, it is quite luminous that the lodgment of two FIRs is not permissible in respect of one and the same incident. The concept of sameness has been given a restricted meaning. It does not encompass filing of a counter-FIR relating to the same or connected cognizable offence. What is prohibited is any further complaint by the same complainant and others against the same accused subsequent to the registration of the case under the Code, for an investigation in that regard would have already commenced and allowing registration of further complaint would amount to an improvement of the facts mentioned in the original complaint. As is further made clear by the three-Judge Bench in Upkar Singh [Upkar Singh v. Ved Prakash, (2004) 13 SCC 292 : 2005 SCC (Cri) 211] , the prohibition does not cover the allegations made by the accused in the first FIR alleging a different version of the same incident. Thus, rival versions in respect of the same incident do take different shapes and in that event, lodgment of two FIRs is permissible.



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49. In the instant case, the second FIR is not in the nature of counter complaint or rival version of the first complaint. For the same incidents, a new version given by the complainant against the same accused, belatedly and admittedly after consulting his partymen.

50. In the judgment cites supra, the Hon'ble Supreme Court has clearly held that in the same transaction, one or more cognizable offence might have committed, for that reason there cannot be multiple FIRs. The scheme of the Cr.P.C does not permit multiple FIRs for the same transaction against same person(s).

51. A conjoint reading of Sections 154, 170 and 173 of the Code and the decisions of the Supreme Court cited supra, makes the legal position clear that for one transaction and same version, there can be only one FIR. If there are rival versions about the same transaction one contradiction to another then more than one FIR is permitted. If the



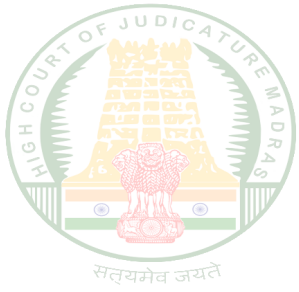
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subsequent complaint is about the same transaction but put it differently or for different offence, the said complaint must be taken as a statement of witnesses under Section 162 Cr.P.C. The investigation on the further information provided under the subsequent complaint has to be done and reported to the Court about the course of investigation.

52. In the instant case, the IO after registering the second complaint pending investigation of the first complaint about the same transaction, had though fit to proceed with the investigation and complete it, ignoring the former complainant for the same transaction. The said omission is grave and illegal.

53. As a result, ignoring totally the first FIR given by a public servant, investigating the second FIR in Cr.No:194/2022 given after 8 months, about the same transaction against the same accused, on the information of a private individual by name Mr.Shanmuga Sundaram, is legally not sustainable.

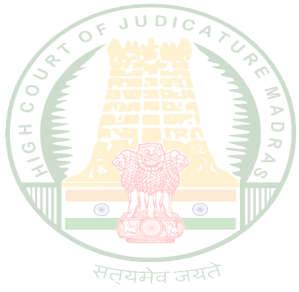


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54.The alleged speech of the petitioner extracted in the complainant of Shanmuga Sundaram in Cr.No.194/2022 is in the nature of condemning the high handedness of the ruling party for misusing the police force, Making certain remarks about the Chief Minister and pointed out his failure to fulfil the poll promises, cannot be by any stretch of imagination as obscene or said intent to create riot or it was an intentional insult to provoke breach of peace to attract Section 294(b) or Section 153 or Section 504 IPC. A expression of thought about the failure of the Chief Minister and his Government or the alleged misuse of the police machinery will not attract the offences under Sections 294(b), 153 and 504 IPC.

55. The complaint drafted and lodged after 8 months of the incident and on consultation with the partymen registered by the first respondent police unmindful of the delay and registration of the earlier complaint for the same incident. Along with the final report the prosecution has not furnished the transcript of the petitioner speech. No evidence that the prosecution has recovered the transcript of the speech



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WEB COPY allegedly made by the petitioner. Out of 10 listed witnesses for the prosecution, 4 are eye witnesses. All of them are members of the ruling party to which the defacto complainant belongs to. The prosecution which rest on the speech of the accused, had not collected evidence necessary to prove the alleged objectionable speech. In between the date of meeting and the date of complaint no incident of riot or breach of peace due to the alleged utterance of the petitioner.

56. Therefore, it is to be held that when no material placed by the prosecution in its final report to test the speech whether it attracts offences under Sections 294(b) or 153 or 504 IPC, there is no scope to frame any charge against this petitioner, prosecuting the petitioner without evidence is a futile exercise.

Point c)

The facts of the case and the manner in which the complaints registered as well as the offences for which the complaints registered; besides the evidence collected and placed before the Court, indicate that the ruling party member not tolerable to the comments made by the



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opposition and the questions raised about the mal-administration and misuse of power had though fit to silent the voice of the dissent by slapping criminal cases with the help of the police, without substances, but with only intention to harass and subject him to run the ordeal of criminal prosecution.

57. The act of the respondent police registering the second FIR given by the ruling party men after 8 months of the incident and ignoring the first FIR given by the public person is enough to suspect his credential. By not referring the earlier complaint and filing final report in the subsequent complaint without even collecting the corpus delecti (authenticated or reliable transcript of the speech) or assigning reason for not producing the corpus delecti, the malicious intend of the first respondent gets magnified.

58. Therefore, in the instant case, from the records, this court has no doubt, that the State Police machinery been mis-used as a tool by the ruling party member to crush the voice of opposition. Hence it is fit



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WEB COPY case for the Court to interfere in the investigation by applying the principle laid in "*Bajanlal's case*" and quash the complaints.

59. As a result, Cr.O.P.No.16230/2023 against Crime No:51/2022 dated 28/02/2022 on the file of the first respondent is **Allowed.**

Cr.O.P.No.16043/2023 and Cr.O.P.No.1270/2024 against Crime No.194/2022 dated 07/10/2022 and S.T.C No.1167/2023 on the file of Judicial Magistrate I, Villupuram are **ALLOWED.**

Consequentially all connected miscellaneous petitions are closed.

13.08.2024

Index:yes
Neutral Citation:yes/no
ari/bsm
To:

- 1.The Inspector of Police, Villupuram West Police Station, Villupuram District.
- 2.The Public Prosecutor, High Court, Madras.



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DR.G.JAYACHANDRAN,J.

ari/bsm

delivery Common Order made in
Crl.O.P.Nos.16043,16230 of 2023 and
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13.08.2024