

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.02.2015

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The HON'BLE MR.JUSTICE R.S.RAMANATHAN

Crl.O.P.Nos.28386 and 28387 of 2009
and
M.P.Nos.1 and 1 of 2009

Thirumalai ..Petitioner in both Crl.O.Ps
(Accused No.2)

vs.

1.State by the Inspector of Police,
Arni Taluk Police Station,
Arni.(Crime No.721/2009)

2.Shakunthala Jayaraman

(2nd respondent impleaded as per the order
dated 24.07.2013)

..Respondents in both Crl.O.Ps/
(Complainant)

Criminal Original Petitions filed under Section 482 of the Criminal Procedure Code to call for entire records relating to Crime Nos.721 and 742 of 2009 pending investigation on the file of the Inspector of Police, Arni Taluk Police Station, Arni for alleged offences under Sections 143, 341, 188, 353 r/w 149 of I.P.C. and to quash the same.

For Petitioner : Mr.G.Saravanan

For 1st Respondent : M.Maharaja

Addl.Public Prosecutor.

COMMON ORDER

These petitions have been filed under Section 482 of Criminal Procedure Code to quash the FIR registered in Crime Nos.721 and 742 of 2009 on the file of the first respondent.

2. The facts of the case is that the petitioner /accused No.2 along with other accused is said to have indulged in road roko, and though they were informed by the police that prohibitory order has been passed under Section 30(2) of the Police Act, which was in force from 01.10.2009 to 30.10.2009 20 persons and more indulged in roadroko without issuing prior notice and getting due permission and the allegation against the petitioner is that he along with accused Nos.1& 3 is alleged to have pushed the respondent/complainant.

Nevertheless, those persons used criminal force prevented the vehicles from proceeding further and indulged in roadroko on 13.10.2009. Hence, cases were registered against the petitioner and others for offence under Sections 143, 341, 188, 353 r/w 149 I.P.C. in Cr.Nos.721 and 742 of 2009. Now, the present revisions have been filed to quash the same insofar as, the petitioner is concerned.

3. The learned counsel for the petitioner submitted that admittedly no prohibitory order was passed under Section 30(2) of the Police Act for initiating proceedings under 188 of I.P.C and hence, a police complaint need not be filed. The learned counsel further submitted that having regard to the Section 195 of Cr.P.C, whenever offence has been committed punishable under Section 188 of I.P.C., the Magistrate shall not entertain the police complaint and therefore, the FIR against the petitioner is liable to be quashed. The learned counsel further submitted that no offences under Sections 143, 341, 353 r/w 149 were made out and having regard to the allegations made in the FIR, the respondent/police ought not have registered the case against the petitioner. He also relied upon the Judgment rendered by this Court in CrI.M.P.No.7091 of 1984 reported in 1984 L.W.(CrI.) 280, (Sudalaimadam and another vs. State by Sub Inspector of Police, Puliyari) in support of his contention.

4. The learned Addl.Public Prosecutor submitted that having regard to the allegations made in the FIR, offence under Sections 143, 341, 353 r/w 149 of I.P.C. are made out and during investigation of the case and filing of final report, this aspect will be considered and depending upon the statements of witnesses, final report will be filed and hence FIR cannot be quashed. The learned Addl.Public Prosecutor further submitted that there is a specific allegation made by the complainant that he was pushed aside by the members of the gang and that it will amount to offence under Section 353 of I.P.C. and having prevented the movement of traffic, offence under Section 341 of I.P.C. was made out and having regard to the number of persons who assembled, offence under Section 143 r/w 149 of I.P.C. is also made out. However, he admitted that there was no prohibitory order.

5. Having regard to the submission made by learned Additional Public Prosecutor that there was no prohibitory order passed, as stated in the complaint, there is no need for further proof. Therefore, this Court accepts the submission made by the learned Additional Public Prosecutor that there was no prohibitory order. Further, as rightly submitted by the learned counsel for the petitioner, when a complaint has been given to the police, for having committed an offence under Section 188 of I.P.C., such complaint cannot be taken cognizance by the police, nor it cannot be treated as a private complaint before the Magistrate as per section 195 of Cr.P.C. Therefore, the FIR registered against the petitioner for offence under Section 188 of I.P.C. is also not maintainable.

6. In the Judgment reported in 1984 LW (Crl.) 280, (Sudalaimadam and another .vs. State by Sub Inspector of Police, Puliyari), it has been made clear that whenever a case has been registered for offence punishable under Section 186 of I.P.C., and if the complaint is not preferred before the court by the officer concerned, the same is liable to be quashed, having regard to section 195(1) of Cr.P.C. in the case referred to supra, initially FIR was registered for offence under Section 353 of I.P.C. and later on, a petition was filed for altering the charge as an offence punishable under Section 186 of I.P.C. and the same was allowed. In the said circumstances, the learned Judge held that in order to substantiate an offence under Section 186 of I.P.C, the complaint has to be preferred before Court by the officer concerned. In the Judgment reported in (1989) Crl. LJ.1833 , Murugesan and Others.v. State of Tamil Nadu , the learned Judge of this Court by referring to the observations made by Supreme Court in Dugacharan Naik v. State of Orissa reported in AIR (1966) SC 1775, held that the provision of 195 Cr.P.C., cannot be evaded by resorting to devices or camouflage of clubbing other cognizable offences, actually not made out, along with the offence under Section 188 of I.P.C.

7. In the Judgment reported in 1984 LW (Crl) 250 Balamohan and others .vs. State) it was held that when the accused are not liable to be prosecuted for the Primary offence, they cannot be proceeded against for the resultant offence under Section 143 of I.P.C. for being a member of the unlawful assembly.

8. Now it has to be seen whether the FIR is likely to be quashed as contended by the learned counsel for the petitioner.

9. As stated supra, the registration of complaint for the offence punishable under Section 185 of I.P.C. cannot be sustained. However, having regard to the allegations made in the FIR that three persons pushed the respondent/complainant aside and prevented the bus and other vehicles from proceeding and indulged in the roadroko, in my opinion, prima facie, offences under Sections 353, 341 of I.P.C are made out.

10. Having regard to the statements of witnesses given during investigation that 20 persons indulged in roadroko and when they were informed that 20 persons should not assemble, the police officer was pushed and 20 persons indulged in roadroko and prevented movement of traffic and hence, I am of the view that prima facie case has been made out for offence under Sections 341, 353 and 149. Thus, a reading of FIR makes out a prima facie case for offence under

Sections 149, 341 and 353 of I.P.C., and therefore, FIR cannot be quashed at this stage. Hence theses Criminal Original Petitions are dismissed. Consequently, connected Miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

kkd

To

1.The Inspector of Police,
Arni Taluk Police Station,
Arni.

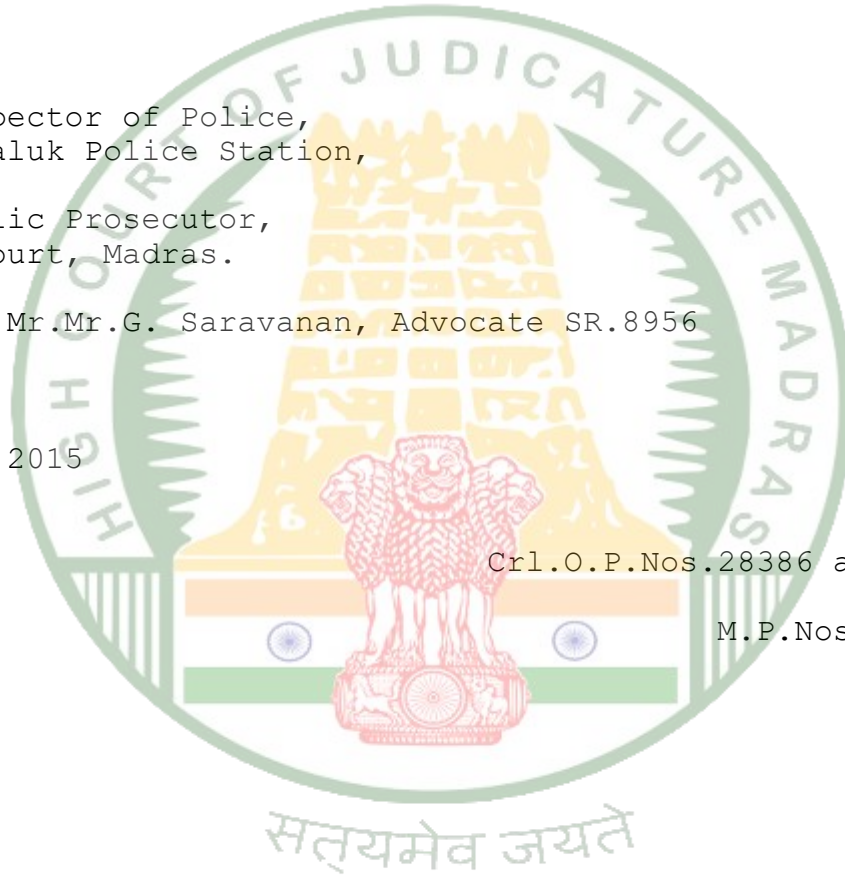
2.The Public Prosecutor,
High Court, Madras.

+ 1 cc to Mr.Mr.G. Saravanan, Advocate SR.8956

TS(CO)

EU 07 .04.2015

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