



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2015

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

CRL.O.P.(MD)No.4728 of 2015
and M.P.(MD) Nos.1 & 2 of 2015

1. Abraham Charles

2.Chandrasekar

.. Petitioners/ A2 and A3

.. Vs ..

State through

The Inspector of Police,
Sivakasi Town Police Station,
Virudhunagar District
(Crime No.705 of 2013)

.. Respondent/Complainant

Criminal Original Petition filed under section 482 of the Code of Criminal Procedure, praying to call for the records in S.T.C.No.4771 of 2013 on the file of the Learned Judicial Magistrate Court, Sivakasi and to quash the same.

For Petitioners : Mr.G. Mariappan

For Respondent : Mrs.S.Prabha

Government Advocate(Crl. Side)

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O R D E R

The petitioners, who have been arrayed as A2 and A3 in S.T.C.No.4771 of 2013 for the alleged offences under Sections 147 and 188 of IPC have come forward with this present petition.

2. The case against the petitioners is that on 03.08.2013, a prayer meeting was conducted beyond the condition imposed by the order of this Court made in W.P.(MD).No.12550 of 2013.

3. The learned counsel for the petitioners submitted that the offence under Section 188 of I.P.C has not been made out. As per the provisions of Section 195(i)(a)(i) of Cr.P.C, cognizance can be taken for the said offence, in case a public servant lodges a complaint. In the case on hand, admittedly, no complaint has been given by any public servant, before the Court. The allegation itself is that the order passed by this Court is violated.

4. The learned counsel for the petitioners relied on various decisions of the Supreme Court reported in (2010) 3 SCC (Cri) 1402, (2010) 9 SCC 567 (C. Muniappan and others Vs. State of Tamil Nadu), (D.K.Rajendran and others Vs. State of Tamil Nadu) as well as this Court in Crl.O.P(MD).No.13251 of 2009 (V. Palaniswamy and others Vs. The Inspector of Pollice, Panjai Puliampatti Police Station, Sathiyamangalam, Erode District).



35. 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. However, we do not agree with the further submission that absence of a complaint under Section 195 Cr.P.C falsifies the genesis of the prosecution case and is fatal to the entire prosecution case.

8. In the earlier decision of this Court, in CrI.O.P(MD). No.13251 of 2009 (V. Palaniswamy and others Vs. the Inspector of Pollice, Panjai Puliampatti Police Station, Sathiyamangalam, Erode District), it has been held as follows in para 5 of the Judgment:-

" 5. Admittedly, in this case, on the basis of the complaint given, police enquired, investigate and filed charge sheet and therefore, the Court should not have taken cognizance of the charge sheet filed by the respondent police. In the decision reported in 2004 MLJ (CrI.) 633 (K.C. Palaniswamy and others Vs. State represented by Inspector of Police, City Crime Branch, Coimbatore), the said law has been discussed and held that the final report filed by the police in respect of Section 188 of IPC is not maintainable. Hence, the lower Court ought not to have taken cognizance of the charge sheet file by the respondent police.

9. In the light of the settled proposition of law as recorded above and considering the fact that there is no dispute of facts, this Court is inclined to quash the proceedings. Accordingly, the Criminal Original Petition is allowed and the impugned order is set aside. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

1. The Inspector of Police,
Sivakasi Town Police Station, Virudhunagar District

2. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+One cc to Mr.G.Mariappan, Advocate, SR.No.20460

trp

<https://hccs.courts.gov.in/jsp/portal/index.jsp>

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